

# **A. 25 (B)**

Highly Confidential

Page 118

1 M. Shapiro  
2 proportionality to it.  
3 **Q. Same proportion as what?**  
4 A. You had the 70 and the 69, and I think  
5 I remember hearing it was something like, you  
6 know, 45 and -- 45 in liabilities and maybe 47  
7 in assets, something like that. So when I say  
8 proportionality, I meant there was a difference  
9 between the liability side and the asset side by  
10 between one and two billion dollars.  
11 And so I don't remember, until the  
12 hearing, I don't remember hearing about the  
13 clarification letter. Like I didn't see it. I  
14 didn't hear about it. Obviously it was being  
15 drafted by the lawyers. And then Lori Fife in  
16 the hearing got up -- I think it was Lori, it  
17 was maybe Harvey and Lori, but I think Lori did  
18 the specifics of going through what the  
19 clarification letter was going to say, what the  
20 deal was, as revised, so that everybody  
21 understood, could understand, you know, that  
22 there had been some changes in the deal and the  
23 deal terms from the APA that had been presented  
24 as the stalking horse APA, which is not uncommon  
25 in these kinds of deals and certainly not  
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Page 119

1 M. Shapiro  
2 uncommon in a deal that had this level of  
3 complexity in terms of the -- the securities  
4 that were being sold.  
5 Does that answer your question?  
6 **Q. Yes, it does, and we were just getting**  
7 **to paragraph 3.3. I wanted to focus your**  
8 **attention on it, which is an adjustment to the**  
9 **cash amount, a kind of true-up, if you will. Do**  
10 **you recall focusing on this provision?**  
11 A. Yes, I do.  
12 **Q. Tell me what you remember about that.**  
13 A. I remember that there was some  
14 discussion, there was some discussion -- I was  
15 involved in some part of this discussion, I just  
16 can't remember exactly when or exactly who it  
17 was with, but I do remember having some  
18 discussion where we talked about the fact that  
19 one way to deal with the fact that this \$70  
20 million was still approximate and people were  
21 trying to get their hands on everything was to  
22 create a provision that would say, basically,  
23 you know, that there would be some sort of a  
24 true-up down the road.  
25 And when I say true-up, I mean there  
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Highly Confidential

Page 120

1 M. Shapiro  
2 would be a purchase price adjustment as really  
3 outlined here. And again, I didn't negotiate  
4 the terms of this in terms of dollars or how  
5 much or exactly how it worked, but I do remember  
6 being part of a discussion where we talked about  
7 that Lehman Brothers would have the benefit of  
8 this provision which would give Lehman Brothers  
9 the right up to \$750 million in the event that  
10 the value of the securities increased before  
11 Barclays were to have sold them.  
12 Let me refresh my recollection of  
13 exactly what this says now.  
14 (Document review.)  
15 A. So the concept -- there was really two  
16 concepts in this provision. One was that  
17 Barclays would have the sole right to just  
18 decide when they wanted to sell any of these  
19 securities that they were buying. So we didn't  
20 really control that. So, unlike a provision  
21 where they had to hold it to a point in time,  
22 this wasn't that. They could have turned around  
23 and sold this the next day or up to the 12th  
24 month anniversary, right? Or they could have  
25 held it.  
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Highly Confidential

Page 121

1 M. Shapiro  
2 And the concept was whenever they --  
3 whenever they did so, they would take, you know,  
4 a recognized profit or loss, as determined by  
5 the LBI mark as of the date of this contract,  
6 and then, in the event that the profits exceeded  
7 the losses, the aggregate profits exceeded the  
8 losses, then up to the first \$500 million, the  
9 purchaser had to pay the seller the net amount,  
10 and if it was more than the \$500 (sic), there  
11 was a 50 percent concept with a total cap of  
12 750.  
13 **Q. Were you aware that this provision was**  
14 **eliminated in the clarification agreement to**  
15 **which you were just referring?**  
16 A. Yes, I was told that as part of the  
17 revised deal that Barclays -- there was  
18 obviously, in that last call at the last part of  
19 the deal, the last negotiation that Bart had  
20 with them, I was told that as part of the give  
21 and take of the negotiation, they were taking  
22 certain things on that they didn't expect to  
23 take on and that they wanted this provision  
24 removed, and so I recall it was removed.  
25 **Q. Do you recall what they were taking on**  
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Page 122

1 **M. Shapiro**  
2 **that they hadn't previously agreed to take on?**

3 A. I don't specifically remember. I  
4 would have to -- I would have to go back and  
5 obviously look at other things, but I don't,  
6 sitting here right now, I don't remember  
7 exactly.

8 **Q. Do you know the categories of things**  
9 **they were taking on? Were they securities**  
10 **positions?**

11 A. Well, I remember that they were  
12 supposed to get some cash originally in the  
13 deal, and I think we dropped the notion that we  
14 would be transferring the cash to them. But I  
15 don't remember the specifics. I would have to  
16 spend more time.

17 **Q. What would you look at to determine**  
18 **what they were taking on that was additional?**

19 A. Well, you would have to go back to --  
20 you would have to look at all along the way the  
21 negotiations. This was -- and again, you  
22 wouldn't find this all in writing because this  
23 was a negotiation going on amongst business  
24 people.

25 **Q. Let me just jump ahead, if you will,**  
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Page 123

1 **M. Shapiro**  
2 **in the interest of time and there's a lot of**  
3 **things in here, and I know that you focused on**  
4 **many of them, but maybe we ought to just go**  
5 **ahead to Article IX to which you referred a few**  
6 **times in your answers concerning this agreement**  
7 **and focus on subparagraph (c), which is on page**  
8 **35. And after you tell me what you recall about**  
9 **that, in addition to everything you have already**  
10 **told me, we'll move on.**

11 A. Okay. So what I remember is that this  
12 provision was being drafted, as I said earlier,  
13 by, you know, a Cleary employee benefits lawyer  
14 and a Weil employee benefits lawyer, neither of  
15 whom I knew before that day. And I remember --

16 MR. STERN: I'll just note that the  
17 witness is referring to page 34.

18 THE WITNESS: Yes, page 34 --

19 MR. CARDEN: Did I misspeak?

20 MR. STERN: No, you didn't misspeak,  
21 but I think you were directing him to page  
22 35.

23 A. Article IX, Section 9.1, and we were  
24 talking now about sometime probably during the  
25 afternoon late -- maybe early late morning,

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Highly Confidential

Page 124

1 **M. Shapiro**  
2 **early afternoon of the 16th of September.**

3 **Q. Okay.**

4 A. These lawyers were drafting this and I  
5 remember looking at it. I remember I was  
6 standing with -- I was standing with Paul  
7 Parker, who was co-head of M&A, who happened to  
8 be in the hallway at that point in time. These  
9 lawyers were sitting kind of in an alcove of the  
10 hallway on chairs, and so there were people kind  
11 of that were milling about who were not directly  
12 reading this or negotiating it, and I remember  
13 saying to him, "Let's make sure we get this  
14 right. Can you get Skip?" Because I want to  
15 make sure that we have this right because Skip's  
16 one of people who was in that negotiation, to  
17 the best of my knowledge.

18 And so Skip came over and I just said,  
19 "I want to make sure we get this right. This is  
20 a pretty important provision for everybody.  
21 Let's make sure that we have it clear."

22 **Q. Okay.**

23 A. And I remember reading it. I remember  
24 going through particularly paragraph --  
25 paragraph (c) with the lawyers, especially this

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Page 125

1 **M. Shapiro**  
2 **whole reduction provision that dealt with the 10**  
3 **percent. I think -- I think Barclays' initial**  
4 **position was basically reduce this total comp by**  
5 **anybody who's not staying or who's not offered a**  
6 **contract, or I can't remember exactly, but**  
7 **basically their point was they wanted a**  
8 **reduction.**

9 We pushed back and said no reduction.  
10 This ultimately came to some kind of a, as you  
11 can see here, some kind of a compromise, if you  
12 want to call it that, which required both 10  
13 percent voluntarily terminated. And no one  
14 knew, obviously, how many people were actually  
15 going to go over to Barclays. It was such an  
16 uncertain time, and they didn't certainly make  
17 any -- give anybody, other than I think the top  
18 eight executives, any assurances of anything  
19 through that period.

20 And so we wanted to be sure that we  
21 had a provision that, you know, seemed fair. So  
22 that's how this got drafted.

23 **Q. Do you remember there having been a**  
24 **specific number that represented the bonus**  
25 **accrual for LBI at this time?**

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Highly Confidential

Page 126

1 **M. Shapiro**  
2 A. No. The only number I recall was  
3 there was a 2 billion total comp number that had  
4 been both referred to and that also is  
5 referenced, somewhere in here referenced, in I  
6 think it's Schedule -- here it is -- reflected  
7 on the financial schedule delivered.  
8 So there was a 2 billion total comp  
9 number which included, as I said, to the best of  
10 my recollection, the bonus pool and the  
11 severance obligations that they were taking on  
12 as part of this, and that number was on that --  
13 if you recall the schedule I mentioned that John  
14 Grenier was working on -- that number was in  
15 that schedule.  
16 **Q. And the schedule that John Grenier was**  
17 **working on perhaps starting as early as Sunday**  
18 **night, but sometime in that Sunday night, Monday**  
19 **morning time period, you said that schedule**  
20 **changed over time, correct?**  
21 A. It definitely changed.  
22 **Q. Did the comp number change on that**  
23 **schedule?**  
24 A. I don't think the comp number changed  
25 much. I think there was an approximate number  
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Page 128

1 **M. Shapiro**  
2 A. On the 32nd floor.  
3 **Q. Did it happen in a conference room**  
4 **with -- tell me where it happened on the 32nd**  
5 **floor.**  
6 A. I think it happened in the conference  
7 room, but I'm not positive. I mean, I -- we  
8 were all -- it was late. It was probably around  
9 between 10 and 10:30 at night, and I just  
10 remember thinking to myself -- on the, sorry, on  
11 the night of the 16th, you know, somewhere  
12 between 8:30 and 10:30 at night, and I just  
13 remember thinking to myself, I hope they don't  
14 ask me to sign this thing because, you know, you  
15 know, and Steve obviously was an authorized  
16 signatory and he was the one who was asked to  
17 sign it.  
18 **Q. Do you know why it was him as opposed**  
19 **to someone else?**  
20 A. I do not know.  
21 **Q. Was there any discussion about this**  
22 **document when it was initialed by Steve?**  
23 A. Not that I'm aware of. Not that I  
24 recall.  
25 **Q. Were there Barclays people in the**  
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Highly Confidential

Page 127

1 **M. Shapiro**  
2 of 2 billion, from what I remember, about that,  
3 and I don't think it changed. But again, I  
4 can't be sure, because I didn't, as I mentioned  
5 earlier, I was not privy to that schedule being  
6 changed. I was not sitting around with people  
7 as they made changes to that, so I might have  
8 seen it like at -- I probably did see it at a  
9 point, and I might have seen it at another  
10 point, and I probably saw it at the end.  
11 What -- the sausage-making, what actually  
12 happened, I doubt I saw everything.  
13 **Q. I'm going to show you what has been**  
14 **marked as Exhibit 19. That's the schedule to**  
15 **which you are referring, is it not?**  
16 A. Yes.  
17 **Q. Okay. And this is the schedule that's**  
18 **referred to in subparagraph 9(c) of Article IX,**  
19 **right?**  
20 A. It looks like it to me. It has  
21 Berkenfeld's initials on it and I do remember  
22 that he initialed the final one.  
23 **Q. Were you there when he initialed it?**  
24 A. I believe I was, yeah.  
25 **Q. Where did that happen?**  
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Page 129

1 **M. Shapiro**  
2 **room?**  
3 A. When he signed it?  
4 **Q. Yes.**  
5 A. There were lawyers, I believe, but I  
6 don't know for sure who was there.  
7 **Q. To what use was this document to be**  
8 **put, if any, in addition to being referenced in**  
9 **paragraph 9(c)?**  
10 A. Right, well, as I said earlier, I  
11 think this piece of paper ultimately was being  
12 used through the course of the discussions  
13 between Sunday night, really Monday morning,  
14 let's call it, and Tuesday night, as trying to  
15 capture what assets and liabilities were being  
16 conveyed, right?  
17 And so I think that you would, if you  
18 had all the different versions of this, you  
19 would find that probably all these numbers were  
20 changing. As they were giving -- as they were  
21 giving people new information, both sides of  
22 this was changing in terms of the, let's call it  
23 the upper part of this, the securities that are  
24 described and the liabilities that are described  
25 outside of the cure payment and the comp  
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Page 130

1 M. Shapiro  
2 numbers.  
3 I don't think that those changed, to  
4 the best of my recollection, from maybe the  
5 first one I saw to this one, but certainly these  
6 numbers changed, and I think -- I think we  
7 started with higher numbers in terms of  
8 aggregate numbers that were just bigger. And  
9 then as the course of the week, those two days  
10 went on, it got a bit smaller. That's the best  
11 I remember.  
12 **Q. You testified previously about the**  
13 **definition of "purchased assets" and, in**  
14 **particular, the 70, approximately \$70 billion in**  
15 **assets being purchased by Barclays, correct?**  
16 A. Yes.  
17 **Q. That \$70 billion number does not**  
18 **appear to be on Exhibit 19, do you agree with**  
19 **that?**  
20 A. No, I would say that that was  
21 intended -- again, I wasn't the draftsman of  
22 the contract, so I can't speak to it, but I  
23 think because they used the word  
24 "approximately" -- you have to remember that you  
25 had lawyers working on the document, right?  
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Page 132

1 M. Shapiro  
2 of this date.  
3 **Q. Which is 68.4?**  
4 A. Which is 68.4 in financing obligations  
5 that they were taking on associated with those  
6 securities up to -- under this schedule it says  
7 2.25 cure payments and up to \$2 billion of comp.  
8 **Q. Do you have any explanation for me as**  
9 **to why this schedule, which is referred to in**  
10 **the APA in paragraph 9(c), has different numbers**  
11 **than the quantum of purchased assets and assumed**  
12 **liabilities in the same document?**  
13 A. Well, I would say it's not very  
14 different if you look at, you know,  
15 approximately 70 billion versus 72.65 billion  
16 and approximately -- and 68.4 billion versus  
17 approximately 69 billion, in my mind, in the  
18 context of this transaction are not materially  
19 didn't.  
20 **Q. Okay. You don't recall any discussion**  
21 **about that differential at all?**  
22 A. Do not recall any discussion at all.  
23 **Q. Did you have any conversation with**  
24 **anyone about the, you know, the residential**  
25 **mortgage assets as being included or not**  
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Page 131

1 M. Shapiro  
2 Reasonably quickly, and lots of them.  
3 But, you know, you had Mike, who was  
4 the principal draftsman, with a few other  
5 people, you had someone on the Cleary side and  
6 maybe some other lawyers involved, and then you  
7 had people who were working on this, which was  
8 separated from the lawyers.  
9 **Q. "This" meaning Exhibit 19?**  
10 A. Yeah. And when I say "this," I don't  
11 really mean so much the exhibit itself as I mean  
12 the information that was going into this  
13 exhibit.  
14 So what I would say is that the  
15 approximately \$70 billion number was intended to  
16 reflect the fact that ultimately people were  
17 talking about, at the time of Tuesday, again  
18 this all changed later, that there was this  
19 amount of assets that we believed we could  
20 convey to them.  
21 **Q. Which is 72.?**  
22 A. 65.  
23 **Q. 65?**  
24 A. And that there was this amount of  
25 liabilities that they were prepared to assume as  
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Page 133

1 M. Shapiro  
2 **included in the deal?**  
3 A. There was discussion -- yeah, there  
4 was definitely like sometimes there was -- at  
5 one point they were in. At one point they were  
6 not in. At one point it was 50 percent in. I  
7 really -- that really was not something that I  
8 was involved in.  
9 I was aware of it as it was happening,  
10 but I didn't participate in it. I would say  
11 that Shafir and Bart were probably two of the  
12 people closest to that, this discussion.  
13 **Q. Did you ever have a conversation with**  
14 **anyone as to whether or not Exhibit 19 should be**  
15 **attached to the APA when it was presented?**  
16 A. No, no discussion about whether it  
17 should be attached, no.  
18 **Q. Is it your view that paragraph 9(c) in**  
19 **referring to the schedule -- strike that. Do**  
20 **you have any explanation for why it wasn't**  
21 **attached to the APA?**  
22 A. I think it wasn't intended to actually  
23 be part of the contract. I think if you have a  
24 contract that's going to be -- to have a  
25 schedule that says, like this schedule, make  
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Page 134

1 M. Shapiro  
2 this part of the contract, right, I think that  
3 because of the -- because of the timing of  
4 everything and the information flow and how this  
5 was all coming together, the people who were  
6 putting this together, as I said before, were,  
7 you know, were not sitting in the drafting room  
8 while the lawyers were drafting.

9 So the lawyers took, you know, what I  
10 would say is a reasonable approach, which was to  
11 say approximately 70, and this schedule, which  
12 was the -- which was the business people's  
13 attempt to reflect what they were trying to  
14 agree, to reflects 72.56 and 68.5, which in my  
15 mind at the time certainly reflected the  
16 approximate numbers that were in the contract.

17 **Q. Do you know whether or not the reason**  
18 **there is any differential at all has anything to**  
19 **do with the residential mortgage positions?**

20 A. I don't know.

21 **Q. Let's go back and pick something up**  
22 **about which you have testified previously.**

23 MR. CARDEN: Let's mark this as  
24 Exhibit 56A.

25 (Exhibit 56A, Agreement, marked for  
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Page 135

1 M. Shapiro  
2 identification, as of this date.)

3 **Q. I want to point out that your name is**  
4 **not on this document, so if you're looking in**  
5 **vein for it, you won't --**

6 A. I was looking for it.

7 **Q. It's not here, at least not that I've**  
8 **seen.**

9 A. I don't even think I was --

10 **Q. My question simply is, have you seen**  
11 **any portion of this document? Including the top**  
12 **page, but my focus really is on the following**  
13 **pages.**

14 A. The answer is no, I have not ever seen  
15 this document.

16 **Q. And this is not the PowerPoint to**  
17 **which you were referring that was used in the**  
18 **meeting on Monday morning?**

19 A. Let me just look at it.

20 (Document review.)

21 A. No, this is not the document, nor have  
22 I ever seen this document.

23 **Q. Okay. Did you have anything at all to**  
24 **do with the Repurchase Agreement that first the**  
25 **Fed had had -- start with that.**

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Highly Confidential

Page 136

1 M. Shapiro  
2 **Did you have anything to the Fed repo**  
3 **agreement?**

4 A. What do you mean by "anything to do  
5 with"?

6 **Q. Did you have any discussions with**  
7 **anybody concerning -- strike that. Did you have**  
8 **any discussions with anybody about the**  
9 **assumption of the Fed repo agreement by**  
10 **Barclays?**

11 A. Yes.

12 **Q. With whom?**

13 A. Well, it really starts with the  
14 assumption of the JPMorgan repo agreement by the  
15 Fed. So, as I understand it, I was told -- I  
16 was told on Sunday afternoon when it became  
17 clear in the late afternoon that Lehman was  
18 going to have to file for Chapter 11, once  
19 the -- once the government determined that it  
20 wasn't going to intercede in any way, that as  
21 part of an attempt to insulate the markets from  
22 further dislocation beyond what they thought  
23 might happen, that the Fed was going to take  
24 over the JPMorgan repo book as of Sunday night,  
25 and I was told that by I think Tom Russo.

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 137

1 M. Shapiro  
2 Then I learned from Jim Seery, I think  
3 it was on Wednesday, maybe right before the  
4 hearing, actually, right before the bankruptcy  
5 court hearing that was the stalking horse  
6 hearing, I remember him telling me that the Fed  
7 had basically told Barclays that if it wanted  
8 support for the transaction from the U.S.  
9 government, it would have to take over the repo  
10 book from the government itself.

11 And so I was not directly involved in  
12 anything, I'm just telling you what I remember  
13 hearing, so it could be untrue. But assuming  
14 that it's true, that Barclays was told or asked  
15 to take over the book from the government and  
16 that it did so either late Wednesday night or  
17 early Thursday morning from the government.

18 **Q. Were you ever told by anyone that**  
19 **Barclays had canceled the repo agreement with**  
20 **Lehman?**

21 A. At what point in time?

22 **Q. At any point in time.**

23 A. Not that I remember, no.

24 **Q. Do you recall having had any**  
25 **conversations with Martin Kelly in connection**

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Highly Confidential

Page 138

1 M. Shapiro  
2 with your -- I'm going to call it, you know,  
3 quarterbacking role?  
4 A. Yeah, I definitely dealt with him. I  
5 don't think I had ever met Martin before this  
6 weekend. I hadn't met a lot of these people  
7 before this weekend. I definitely had some -- I  
8 definitely sat down with him once, I think, and  
9 went through -- one of the things we were trying  
10 to do was to, when Barry Ridings and Lazard was  
11 hired on Sunday night, one of the functions that  
12 they undertook was to try to understand what  
13 securities were being sold and try to understand  
14 the value of those securities and also try to  
15 understand what those securities might be valued  
16 at -- and this was obviously going to be  
17 speculative -- if Lehman was not purchased and  
18 these securities were going to have to be  
19 liquidated in any way.  
20 And so one of the things that I think  
21 we talked to Martin about was organizing that  
22 effort, finding who were the right people and  
23 all, that these were obviously different pockets  
24 of kinds of securities. I didn't know most of  
25 the people in Fixed Income. He was around some  
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Page 140

1 M. Shapiro  
2 he would have said.  
3 Q. And do you remember any conversations  
4 with Martin concerning how those securities were  
5 being valued?  
6 A. No. Not specifically, no.  
7 Q. Are you aware --  
8 A. No, I don't remember specifically that  
9 I had such conversations.  
10 Q. Did you ever have any conversations  
11 with Martin about valuing those securities on  
12 any basis other than Lehman's marks?  
13 A. No. No.  
14 Q. Did you ever have any conversations  
15 with anyone concerning whether or not the value  
16 of those securities had been discounted off of  
17 Lehman's marks in the sale to Barclays?  
18 A. No, no discussion that I ever heard  
19 about a discount.  
20 Q. Are you, as you sit here today, are  
21 you aware of whether a discount was given to  
22 Barclays in the sale of those securities?  
23 A. I'm not aware that there was a  
24 discount. The only, again, the only awareness  
25 of the difference between the marks that were on  
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Page 139

1 M. Shapiro  
2 of this stuff, so I remember he was helping  
3 organize some of that. He was clearly someone  
4 who was around some of these discussions on the  
5 securities.  
6 I wouldn't say I had extensive, like,  
7 you know, like extensive discussions with him  
8 around this stuff, so I do remember coming into  
9 contact with him, you know, regularly over the  
10 course of a 24-hour period, let's say, but he  
11 was really spending a lot of time, as I could  
12 see it, at least, with where Bart was asking him  
13 to get certain information for Bart, maybe Ian  
14 as well, and so he was around the financial side  
15 of these securities in terms of information  
16 flow.  
17 Q. Could you tell what the difference in  
18 role, if any, was between Ian and Martin in  
19 connection with that effort?  
20 A. I couldn't tell you, no.  
21 Q. Were you ever present when Martin was  
22 speaking to Bart about the securities that were  
23 being considered for sale?  
24 A. I probably was, but I don't really  
25 have any specific recollection of exactly what  
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Page 141

1 M. Shapiro  
2 the securities that were (A) first described in  
3 the contract and then ultimately were in the  
4 repo book, which was reflected in the -- I think  
5 the testimony that Bart gave at the hearing as  
6 well as Lori Fife's description to the court,  
7 was that there was a differential between the  
8 marked value of the securities that were to be  
9 transferred and the liabilities associated with  
10 those securities that were assumed by Barclays,  
11 where there was let's call it somewhere between  
12 a one and a half and two billion dollar  
13 differential which everybody was aware of.  
14 How that was ultimately determined  
15 might have been, you know, that was obviously  
16 something that was -- was not something that I  
17 was privy to.  
18 Q. Was your understanding that was the  
19 term of the -- the deal terms of the  
20 transaction?  
21 A. Yeah, as described both in the court  
22 and in the contract, correct.  
23 MR. CARDEN: Let's go off the record  
24 for a second.  
25 (Recess; Time Noted: 12:08 P.M.)  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 142

1 M. Shapiro  
2 (Time Noted: 12:22 P.M.)  
3 BY MR. CARDEN:  
4 **Q. You testified previously that on,**  
5 **maybe it was Thursday evening or at some point**  
6 **later in the week, that you thought that there**  
7 **was some concern about Barclays going through**  
8 **with the deal, okay? I don't know what language**  
9 **you used. Tell me what the -- was there**  
10 **anything that Barclays said to anyone at Lehman**  
11 **that caused that concern, or was it just a**  
12 **general anxiety about wanting to get something**  
13 **done?**  
14 A. No, it was really a comment that was  
15 made to me by Jim Seery, who said something like  
16 there's a big, I think his words were "shit  
17 show" going on between JPMorgan and Barclays  
18 around the repo and that, you know, JPMorgan was  
19 screwing around doing something that Jim  
20 characterized, as I said, as something that was  
21 not positive, and that, you know, that was  
22 putting the deal potentially at risk. That was,  
23 I would say, the nature of what concerned me.  
24 So that was it.  
25 **Q. I take it that that was related in**  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 143

1 **M. Shapiro**  
2 **some way to what assets were going to be**  
3 **available to sell to Barclays?**  
4 A. No.  
5 MR. STERN: Objection to the form.  
6 A. No, as I understand it, at the time it  
7 was really related to this repo that had been  
8 taken over and that, you know, not digressing  
9 too much, JPMorgan, you know, in my mind, was a  
10 bad actor in the entire situation. And so  
11 ranging from the fact that they pulled a lot of  
12 liquidity out of the firm before we filed to  
13 entering into an agreement to be able to set  
14 things off shortly before the filing took place  
15 to then, you know, as Jim explained it to me at  
16 the time, kind of changing the mix of what was  
17 in the repo that Barclays was basically being  
18 asked to take over by the Fed.  
19 So, as far as I knew at that point in  
20 time, in the week, you know, as of Tuesday when  
21 we signed the contract and once we went to  
22 court, the contract says what it says in terms  
23 of the mix of securities and the repo  
24 securities, if you want to call them those, had  
25 not been -- that was not dealt with until  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 144

1 M. Shapiro  
2 Friday, as I understood it.  
3 So this was happening really more like  
4 Wednesday-ish when this whole repo thing came  
5 up, and my understanding was that that could  
6 put, you know, a chink in the deal because  
7 Barclays was concerned about what was going on.  
8 That's -- and that was the nature of the concern  
9 that I had, just that particular issue.  
10 **Q. Did Jim Seery have something to do**  
11 **with the repo? Was it part of his**  
12 **responsibility?**  
13 A. He knew about stuff. I don't know  
14 what he actually had to do with it. He was in  
15 the loop on certain things, but I don't know  
16 what he actually had to do with it.  
17 **Q. Did you ever have any conversations**  
18 **with anyone at Lehman as to what collateral was**  
19 **in the repo?**  
20 A. In the JPMorgan repo?  
21 **Q. No, I'm sorry, in the repo taken over**  
22 **by Barclays?**  
23 A. No. Not specifically, no.  
24 **Q. Generally?**  
25 A. When I say "specifically," I mean, I  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 145

1 M. Shapiro  
2 knew there was a repo. I didn't know what  
3 securities were in it. So if that's the nature  
4 of your question, the answer is no.  
5 **Q. Did you ever develop an understanding**  
6 **as to how Barclays taking over the repo changed**  
7 **in any way the terms of the transaction**  
8 **memorialized in the APA?**  
9 A. Well, I would say my understanding  
10 was, at the time, that we had this description  
11 in the APA of this call it 70 billion and 69  
12 billion of assets/liabilities which related to  
13 some pool of securities that were categorized in  
14 that schedule that we went through before,  
15 Schedule -- that was referenced in --  
16 **Q. Exhibit 19 --**  
17 A. Exhibit 19.  
18 **Q. -- the balance sheet?**  
19 A. Exactly.  
20 **Q. Initialed by Steve?**  
21 A. Right, initialed by Steve.  
22 And then, over the course of the week  
23 it became more difficult for everybody both on  
24 the Lehman side and on the Barclays side to  
25 ensure that those securities were actually  
TSG Reporting - Worldwide 877-702-9580



Highly Confidential

Page 146

1 M. Shapiro  
2 saleable because of the amount of securities  
3 that had been blown out, had been sold, had been  
4 bought, the change in the values. Everything  
5 was happening, you know, in a way that did not  
6 lend itself to a very clear understanding,  
7 probably on both sides at that point as to  
8 exactly what was going to be conveyed.  
9 So I think there was some comfort  
10 taken that there was a known amount of  
11 securities and loan as a result of the repo,  
12 right? So you had a repo, you had a defined  
13 group of securities that existed in the repo  
14 that was, up until JPMorgan maybe played around  
15 with it, I don't know exactly what happened, by  
16 Friday presumably -- and again, I was not privy  
17 to this so I'm just surmising based on my  
18 recollection -- that the principle was that this  
19 was a group of securities, the universe of which  
20 was identifiable, the liabilities associated  
21 with them obviously was identifiable because  
22 that was the repo loan, and therefore, you could  
23 do a deal on that basis where there was clarity  
24 around exactly what was being taken over.  
25 That was my understanding of why the  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 147

1 M. Shapiro  
2 deal ultimately got modified on Friday, and then  
3 that was obviously explained in court and  
4 evidenced by, ultimately, that clarification  
5 letter that got entered into.  
6 **Q. Did you ever speak to Bart McDade**  
7 **about that change?**  
8 A. I don't remember.  
9 **Q. Going back just a moment to the**  
10 **hearing on Wednesday, were you in court that**  
11 **day?**  
12 A. Yes, I was sitting in the audience.  
13 **Q. Did you help prepare Bart for that**  
14 **hearing?**  
15 A. I did -- I wouldn't call it I helped  
16 prepare him. He actually was with the Weil  
17 folks who actually prepared him. I think I said  
18 I think I was in his office a couple of hours  
19 before we went down. I said, "You ever been in  
20 bankruptcy court before?" And he said no, and I  
21 said, "Well, let me just give you -- I'll just  
22 tell you kind of what it's like."  
23 I gave him a few minutes of advice  
24 just generally about like what it is and then,  
25 you know, how his testimony was probably going  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 148

1 M. Shapiro  
2 to get proffered, but he still could end up  
3 getting called as a witness, and he -- I don't  
4 think he was particularly looking forward to it,  
5 but he, you know, he was going to do it.  
6 **Q. Okay. And did you help prepare him on**  
7 **Friday before the hearing on Friday?**  
8 A. Not really. I was in his office  
9 before we all went down, a couple of hours  
10 before we all went down, but really the Weil  
11 folks were going to prepare him.  
12 **Q. Let me show you again what has been**  
13 **marked as Exhibit 19 and draw your attention to**  
14 **the cure amount about which you testified**  
15 **previously --**  
16 A. Yes.  
17 **Q. -- reflected on this schedule as**  
18 **being, as I read it, 2.25 billion. Do you see**  
19 **that?**  
20 A. Yeah, I do see that.  
21 **Q. Do you recall that number ever**  
22 **changing in the course of the week?**  
23 A. I don't remember -- I don't really  
24 remember how that 2.25 got in there. I  
25 personally have a better recollection of a \$1.5  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 149

1 M. Shapiro  
2 billion number that we were using for -- and  
3 obviously it was an estimate, right?  
4 So these were all, at the end of the  
5 day, as I explained to you earlier, we were  
6 trying to do our best at the time to provide  
7 Barclays, principally, with a perspective on  
8 what it might cost them to take over all of the  
9 contracts that could be subject to the  
10 assumption of the assignment. And so, as I said  
11 earlier, we were trying to come up with an  
12 estimate of what that number was.  
13 My recollection was we -- I used, in  
14 my own head, a billion-five, and the reason I  
15 remember that is that when we were negotiating  
16 the breakup fee, we were -- I was thinking  
17 about -- and I had negotiated the breakup fee in  
18 the transaction relating to the stalking horse  
19 bid -- I remember thinking, okay, we can do 3,  
20 typically 3 percent of the deal. Barclays asked  
21 for a lot more going in. They asked -- I think  
22 Victor Lewkow told me something like \$250  
23 million or something like that. It was big  
24 number. And I told him we weren't going to do  
25 that, that in my mind that, you know, there  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 150

1 M. Shapiro  
2 was -- that that could be perceived as, you  
3 know, chilling the bidding. I didn't want any  
4 perception of anybody feeling that they couldn't  
5 make a bid.

6 Obviously, you know, I said that 3  
7 percent was a normal -- he was not a bankruptcy  
8 lawyer, by the way. So I was -- I wouldn't say  
9 I was educating him because he obviously was a  
10 smart guy, but I was explaining to him in my  
11 experience what an acceptable number would be  
12 from the court's perspective, and at the time my  
13 recollection is we were looking at \$250 million  
14 for goodwill, it was around a million to a  
15 million-450 for the buildings, which ultimately,  
16 you know, that was our estimate, we didn't have  
17 our desktop appraisals yet --

18 MR. STERN: Billion.

19 A. Billion, yeah, sorry.

20 1.45 billion. That was a  
21 billion-seven. We added this estimate for cure  
22 costs of a billion and a half, that got us to  
23 3.2 billion, and we told them that the \$100  
24 million breakup fee would be approximately 3  
25 percent and that's what we would be willing to

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 151

1 M. Shapiro  
2 do, plus some expense reimbursement, I think  
3 maybe 25 million.

4 **Q. And that's in your negotiation with  
5 Barclays?**

6 A. That's in my negotiation clearly on  
7 behalf of Barclays, correct.

8 **Q. Right?**

9 A. And so in using the number -- I  
10 remember that the billion-five was a number we  
11 used from a cure standpoint, and that was how we  
12 got as part of the arrival of what, you know,  
13 what a \$100 million number would be, you know,  
14 viewed as. And so at the time that seemed, you  
15 know, as a fair number given the kind of  
16 transaction we were with entering into and not,  
17 not unusual in size in a large transaction.

18 You know, I worked on the Time Warner  
19 transaction. We advised Time Warner around  
20 Adelphia and we had something like 2 percent of  
21 an 18 to 20 billion dollar transaction. So this  
22 was not nearly as large on the scale of things.

23 So \$100 million felt like we could  
24 pass muster with the court, with the committee,  
25 felt like a fair number, and I remember

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 152

1 M. Shapiro  
2 negotiating that very -- in a very difficult  
3 conversation with Victor where he was, you know,  
4 telling me it couldn't be that low and had to be  
5 higher, and I basically told him we weren't  
6 going to do that.

7 **Q. When was this conversation?**

8 A. In the middle of the night on the  
9 15th/16th.

10 **Q. Did he explain why he thought it was  
11 important for that number to be so much higher?**

12 A. Yeah. Buyers always want higher  
13 numbers because it keeps -- it gives them a  
14 natural advantage over any other bidder, of  
15 course.

16 **Q. Was there anyone else they thought  
17 might come in and bid?**

18 A. I don't know what was in their minds,  
19 but --

20 **Q. What was in your mind? Did you think  
21 someone else could come in?**

22 A. I didn't think that was likely. I  
23 thought that, you know, and I think this is part  
24 of my discussion with him, I said that, you  
25 know, that the firm had been shopped all summer

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 153

1 M. Shapiro  
2 and we didn't have a buyer. Obviously, Bank of  
3 America, who was the other bidder, had just  
4 announced their deal with Merrill Lynch so they  
5 were out of the picture.

6 The world felt like it was in a state  
7 of virtual collapse. AIG was going down at the  
8 same time as we were, or potentially going down,  
9 I should say, since they got rescued, but we  
10 didn't. And I told him that I didn't, you know,  
11 as far as I was concerned, I didn't see, you  
12 know, I said, kind of look around you. Do you  
13 see any other people doing a deal with someone  
14 else? I mean, you're here, we're here. I think  
15 that we need to, most importantly, put, you  
16 know, a number on the table for the court that's  
17 a fair number that would still provide you  
18 compensation if you did get topped, but not some  
19 number that would not be acceptable to people.

20 **Q. Now, in that conversation on late  
21 Monday night or early Tuesday morning, you say  
22 you used a number for cure of 1.5?**

23 A. Yes. My recollection for the purposes  
24 of calculating this \$100 million.

25 **Q. I understand. Do you have any**

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 154

1 **M. Shapiro**  
2 **recollection where you got that number and why**  
3 **it's different than number that's in Exhibit 19?**

4 A. The only recollection I have is that,  
5 as I said, I had asked people to go back and get  
6 me a proxy for what that month, you know, call  
7 it snapshot of a monthly payables number would  
8 be off of let's call them trade payables, which  
9 would really cover contracts that you're paying  
10 under, excluding employee liabilities and things  
11 like that.

12 Somebody probably in my team who was  
13 tasked with that -- it could have been George  
14 Mack, it could have been somebody else, Dan  
15 Flores -- I'm sure came back to me and said, I'm  
16 being told that rough cut around a billion-five,  
17 but it was a true estimate, we never told  
18 Barclays it was anything other than an estimate,  
19 and we told them it could be higher, it could be  
20 lower. And it was, at the end of the day, it  
21 was always going to be based on what contracts  
22 they ultimately assumed. So, you know, which we  
23 didn't have any clear view on other than the  
24 fact that we thought they were going to need a  
25 good chunk of the contracts to operate the firm.

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 155

1 M. Shapiro  
2 **Q. Just so I'm clear, I understand what**  
3 **the number was and where you got it and the**  
4 **like, but do you have any explanation for why**  
5 **it's different -- the 1.5 you used is different**  
6 **than the 2.25 in Exhibit 19?**

7 A. No, I don't know why they're  
8 different, no.

9 **Q. Now, when you did your -- when you had**  
10 **your conversation with the Cleary gentleman, Mr.**  
11 **Lewkow, did you include in the calculation --**  
12 **strike that.**

13 **When you had your conversation with**  
14 **Victor Lewkow about the breakup fee, you did not**  
15 **include the comp number for purposes of**  
16 **calculating the breakup fee, did you?**

17 A. No, I didn't.

18 **Q. And why is that?**

19 A. I guess it was a judgment call on my  
20 part, but an argument certainly could have been  
21 made, if I had included it as part of it, that  
22 those were funds that were going solely to  
23 employees as opposed to, when you think of a  
24 cure payment, that's clearly going -- that's,  
25 you know, there's a clear benefit to the estate

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 156

1 M. Shapiro  
2 of picking up cure payments for two reasons:  
3 One is that sometimes the estate can be asked to  
4 pick them up as part of the assumption  
5 assignment, which I didn't want to have happen,  
6 and two is that, to the extent that they were --  
7 Barclays was going to take contracts, that was  
8 eliminating claims from the estate which  
9 otherwise would have arisen under those  
10 contracts being rejected.

11 So there's a good reason why. And  
12 certainly I remember Mr. Despains, Luc Despains,  
13 at the hearing argued about whether or not that  
14 was appropriate to include as part of the, let's  
15 call it -- but it's not uncommon, and I think  
16 people in the profession would agree that it's  
17 not uncommon for designated assumed liabilities  
18 to be included as part of the purchase price.

19 It was my judgment that the comp pool,  
20 because it was solely for employees, because an  
21 argument certainly would have been made probably  
22 that, you know, employees -- that Lehman's  
23 obligation to pay employees, you know, was that  
24 a legal obligation that, you know, a lot of it  
25 was bonus or severance that who knows whether it

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 157

1 M. Shapiro  
2 ultimately would have been permitted to be paid  
3 if it had actually been argued.

4 So rather than getting into that  
5 argument, I'm a reasonably practical person, in  
6 my judgment and experience of 20 years of doing  
7 this, it was less complicated to leave it out.  
8 And all it would have done was add to the  
9 number, which I wasn't trying to do. I was  
10 trying to keep it to a number that I felt was a  
11 reasonable number that people could find  
12 acceptable.

13 **Q. And I take it Mr. Lewkow didn't add it**  
14 **in to get to a bigger number either? He didn't**  
15 **try to add it in?**

16 A. No. No. He just wanted a bigger  
17 number per se, truthfully. He didn't really  
18 care how I was calculating it. He just wanted a  
19 bigger number.

20 And we had a pretty vociferous  
21 argument in the middle of the night, and I just  
22 remember pushing back very hard on him and  
23 basically telling him that he should be focused  
24 on getting the deal done as opposed to worrying  
25 about a topping bid.

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 158

1 M. Shapiro  
2 (Exhibit 57A, a document bearing Bates  
3 Nos. 10296233 through 10299664, marked for  
4 identification, as of this date.)  
5 **Q. Show you what has been marked as**  
6 **Exhibit 57A, Mr. Shapiro. I will tell you that**  
7 **the top e-mail sliver doesn't have your name,**  
8 **but if you look right below, there's one below**  
9 **it that does.**  
10 A. Okay.  
11 **Q. And it's my earnest and heartfelt**  
12 **belief that the document that is page 2 is what**  
13 **was attached to this e-mail.**  
14 A. Okay.  
15 **Q. But I could be wrong.**  
16 A. Okay.  
17 **Q. So let me ask you this way: Have you**  
18 **ever seen Exhibit 57A before?**  
19 MR. STERN: I'll just note that the  
20 Bates numbers are not sequential. I'll just  
21 note that for the record.  
22 **Q. Have you ever seen page 2 of Exhibit**  
23 **57A?**  
24 A. Only in preparation for this  
25 deposition.

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Highly Confidential

Page 159

1 M. Shapiro  
2 **Q. You have no recollection of having**  
3 **seen it before?**  
4 A. None.  
5 **Q. Do you know for a fact that you**  
6 **didn't?**  
7 A. I don't know for a fact that I didn't,  
8 but I don't have any recollection of it, and I  
9 don't know who Julie Barboza is.  
10 **Q. Okay.**  
11 A. I suspect, just, you know, by way of  
12 background, that I was copied on a lot of things  
13 I think during those two days because people  
14 thought I was one of the key people around it,  
15 and I was not able to read my e-mails, as you  
16 can imagine, every minute of the day going  
17 through a 48-hour negotiation.  
18 So is it possible that I saw it? It's  
19 possible. I don't remember it and I don't know  
20 who she is.  
21 **Q. Okay. I take it, since you don't**  
22 **recall having seen it, that you can't explain**  
23 **the way this document's set up in terms of its**  
24 **numbers. It goes from 1, 4, 7 and 5?**  
25 A. No idea.

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 160

1 M. Shapiro  
2 **Q. There's nothing in your experience**  
3 **that helps illuminate why that would be the**  
4 **case?**  
5 A. I have no idea, no. Nothing in my  
6 experience, other than that she doesn't know how  
7 to number.  
8 **Q. Well, if you haven't seen this, no**  
9 **sense pushing it around. Okay. Thank you for**  
10 **that.**  
11 I show you what has been marked  
12 Exhibit 22, Mr. Shapiro. Have you ever seen  
13 this document before?  
14 A. No.  
15 **Q. I draw your attention to page 95 under**  
16 **the --**  
17 A. I just want to see what this document  
18 actually is.  
19 **Q. Take your time.**  
20 A. I presume that this is the annual  
21 report as published by Barclays.  
22 **Q. I have no more information than you do**  
23 **in looking at the document --**  
24 A. Okay.  
25 **Q. -- on its face.**

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 161

1 M. Shapiro  
2 A. Okay. I have never read it. I  
3 presume Results Announcement is their equivalent  
4 of an annual report.  
5 **Q. I can only offering you the following**  
6 **modest benefit. I didn't write it and so it is**  
7 **what it -- it is what it is based on the review**  
8 **of the document.**  
9 A. Okay.  
10 **Q. But right now I'm only directing your**  
11 **attention to page 95 of Exhibit 22?**  
12 A. Okay.  
13 **Q. You've already told me you have not it**  
14 **before, right?**  
15 A. No, I have not seen this.  
16 **Q. I want to draw your attention to the**  
17 **penultimate paragraph on that page, which is a**  
18 **one-line paragraph. "The excess of the fair**  
19 **value of net assets acquired over consideration**  
20 **paid resulted in 2,262,000 of gains on**  
21 **acquisition." See that?**  
22 A. I do see the sentence, correct.  
23 MR. STERN: I think you should read  
24 the whole section.  
25 MR. CARDEN: I apologize. Actually, I

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 162

1 M. Shapiro  
2 think Jack is absolutely correct about that.  
3 **Q. Why don't you just take a moment and**  
4 **read this section under "Acquisitions."**  
5 A. Okay.  
6 **Q. Okay. I may have misspoken before,**  
7 **but let me just rephrase the question.**  
8 **Directing your attention to the**  
9 **penultimate paragraph that says, "The excess of**  
10 **the fair value of net assets acquired over**  
11 **consideration paid resulted in a 2,262 million**  
12 **pound -- million pounds of gains on**  
13 **acquisition." Do you see that?**  
14 A. Yes, I do see that.  
15 **Q. Okay. Let's say it simpler because**  
16 **it's better to say billion. It's easier to say**  
17 **billion.**  
18 A. I understand what you're saying.  
19 **Q. It's 2,262 million of pounds, which is**  
20 **awkward. So you see the paragraph that states**  
21 **that Barclays realized a gain on the**  
22 **Lehman/Barclays transaction of \$1.262 billion,**  
23 **do you see that, sir?**  
24 A. I do see that, yes.  
25 **Q. Pounds. My mistake. I'm sorry.**  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 163

1 **M. Shapiro**  
2 **Do you see the paragraph that states**  
3 **that Barclays realized a 2.262 billion pound**  
4 **gain on the Lehman/Barclays transaction?**  
5 A. I do see the sentence that says that.  
6 **Q. Based upon your involvement in the**  
7 **negotiation between Lehman Brothers and**  
8 **Barclays, is that consistent with what you**  
9 **understand to be the transaction?**  
10 A. I have no idea how this relates to the  
11 transaction.  
12 MR. CARDEN: Okay. I'm going to  
13 take -- I'm going to stand down to my  
14 colleagues now.  
15 (Discussion off the record.)  
16 (Luncheon recess; Time Noted: 12:48  
17 P.M.)  
18  
19  
20  
21  
22  
23  
24  
25  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 164

1 M. Shapiro  
2 AFTERNOON SESSION  
3 (Time Noted: 1:27 P.M.)  
4 MARK J. SHAPIRO, resumed and  
5 testified further as follows:  
6 EXAMINATION BY (Cont'd.)  
7 MR. CARDEN:  
8 **Q. I just have what I think will be a**  
9 **short series of questions, and then I'm going to**  
10 **pass you off to some of my friends down here at**  
11 **the end of the table.**  
12 **You went to the hearing on Friday?**  
13 A. Correct.  
14 **Q. Which lasted late into the evening?**  
15 A. Until about 1 A.M.  
16 **Q. You stayed the entire time?**  
17 A. Correct.  
18 **Q. Did you report to Lehman on Saturday?**  
19 A. No, I did not.  
20 **Q. Sunday?**  
21 A. When you say "report"?  
22 **Q. Well, did you go to the building on**  
23 **Saturday?**  
24 A. No, I went to California, actually.  
25 **Q. Okay. Did you go on business?**  
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Page 165

1 **M. Shapiro**  
2 A. No, I was -- my first cousin's  
3 daughter was getting bat mitzvahed in San  
4 Francisco and I had promised her I would be  
5 there and so I -- the hearing ended at 1 A.M. I  
6 got home in to Connecticut about 2:30, showered,  
7 shaved, took about a 15-minute nap, and then got  
8 in my car and drove to JFK and got on the 6 A.M.  
9 flight to San Francisco.  
10 **Q. Somebody should have put you in a car**  
11 **instead of having you drive your own.**  
12 **When did you come back from**  
13 **California?**  
14 A. I wasn't sure who I was employed by at  
15 that point.  
16 **Q. When did come back from California?**  
17 A. Late Sunday night.  
18 **Q. Arriving Monday morning, or**  
19 **arriving --**  
20 A. No, we arrived I believe on Sunday  
21 night.  
22 **Q. Did you go into the office on Sunday?**  
23 A. Yes.  
24 **Q. Did you have any responsibilities of**  
25 **any kind related to what I'll call closing the**  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 166

1 M. Shapiro  
2 transaction that day?  
3 A. No.  
4 Q. What did you do that day at work?  
5 A. I spoke to Jim Seery a little bit  
6 about, you know -- the transaction had been  
7 announced as closed I think at opening of the  
8 morning. There were a lot of people  
9 congratulating me, truthfully, about getting it  
10 done and wanting to hear what happened. And so  
11 there was a fair amount of like relief,  
12 generally relief, I guess, and we had a whole --  
13 I mean, one of the things that, in the meantime,  
14 I have a business to run and so we had a lot of  
15 clients who we were trying to make sure we  
16 preserved the relationship with as we brought  
17 them from Lehman to Barclays. And as you  
18 probably know, part of the deal was that  
19 engagements would be transferred over.  
20 And that was a process. You had to  
21 get the client's approval, et cetera. So we  
22 were in -- I was getting my team to focus on  
23 let's make sure that we bring everybody along.  
24 We actually kept every single mandate we had at  
25 Lehman over to Barclays, with the exception of  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 167

1 M. Shapiro  
2 one that we had basically had to give up during  
3 the weekend, but other than that -- during the  
4 weekend when they needed to have somebody around  
5 it.  
6 But so I'd say I spent that better  
7 part of that day and obviously just dealing with  
8 the aftermath, but not in terms of like the  
9 documentation or the deal.  
10 Q. Did you have any responsibilities  
11 concerning the collateral, the valuation of the  
12 collateral, the transfer of the collateral,  
13 anything at all concerning what I'll call the,  
14 you know, finalizing the transaction?  
15 A. No.  
16 Q. So your labors were done as of Friday?  
17 A. Yeah. My view was, as of Monday, I  
18 was figuring out -- my wife had complained to me  
19 all week that I was the only person at Lehman  
20 Brothers not looking for a new job, and so  
21 since -- I told her I had a responsibility to,  
22 if we could get this deal done with somebody, to  
23 help complete it. I felt I had done that and I  
24 was at that point going to figure out what I was  
25 going to do next. So I would say I was spending  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 168

1 M. Shapiro  
2 some of my time talking to -- talking to people,  
3 including an offer made from your own firm.  
4 Q. All right. And you signed -- I'm  
5 sorry, when did you receive the offer letter  
6 that's been marked as 55A? It's dated September  
7 25, 2008.  
8 A. I think around that date. That's my  
9 recollection. I had been -- you know, as soon  
10 as we came over, of course, everybody was saying  
11 like what's happening. And I have, you know, I  
12 had 12, 13 people working for me. I felt  
13 responsibility for them, you know, in terms of  
14 what was going to happen next. So I was trying  
15 to figure out what to do.  
16 I had gotten a lot of, while the week  
17 was going on, e-mails and voice mails from  
18 people offering me or saying, you know, when  
19 this all finishes up, let's talk, you know, what  
20 are you going to do next. Corinne Ball, as I  
21 indicated, your partner left me a long message  
22 saying you won't have to skip a day, you could  
23 be a partner here tomorrow, just call me back,  
24 please. And there were other people like that  
25 who had very kind messages.  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 169

1 M. Shapiro  
2 And so I basically was trying to  
3 figure out what to do. I didn't really know  
4 anything about Barclays at all. Literally, I  
5 didn't know a single person at Barclays, had  
6 never dealt with Barclays, didn't really know  
7 what this would mean for me in terms of, you  
8 know, my area that, you know, that I do business  
9 in and whether in fact it would be an effective  
10 platform to do business in it.  
11 And so it was a combination of me  
12 figuring out is it a place that I wanted to go  
13 to, how were they going to fairly compensate me,  
14 would I be able to have my group, my title, what  
15 was the -- what was the deal going to be in  
16 terms of advisory and financing, would we have  
17 access to balance sheet. I mean, all of those  
18 questions in my mind, and then weighing that  
19 against other opportunities that people were  
20 coming in to me with.  
21 Q. During this time period, the September  
22 2008, did you have a personal e-mail address?  
23 A. I have an AOL account, yes.  
24 Q. Is there any reason to believe that  
25 anything related to this transaction, any  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 170

1 M. Shapiro

2 **communications of any kind, resulted in**  
3 **communications in your AOL account?**

4 A. I don't think so, no. I would be  
5 really surprised if I -- I was at the firm  
6 pretty much the whole time, and if I wasn't at  
7 the firm, I was in bed sleeping for two or three  
8 hours a night. So I would say highly unlikely.

9 **Q. Okay. Did you carry a BlackBerry**  
10 **during those --**

11 A. Yes.

12 **Q. -- weeks?**

13 A. Yes.

14 **Q. And is your BlackBerry set up so as to**  
15 **receive AOL and the Lehman e-mail?**

16 A. No, it couldn't. You can only,  
17 because of the firewalls up at investment banks,  
18 you can only access -- you can't even access  
19 Yahoo or AOL or anything through your BlackBerry  
20 or your computer. You just can't do it.

21 **Q. Well, we may come to this, but we'll**  
22 **want you to take a look at your AOL account and**  
23 **see what you've got, but we'll pass that right**  
24 **now and I'll deal with your counsel on that.**

25 **You are, by the way, represented by**  
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Highly Confidential

Page 171

1 M. Shapiro

2 **Mr. Stern, correct?**

3 MR. STERN: Yes.

4 A. Barclays has employed Mr. Stern as  
5 counsel, and he's defending my deposition,  
6 correct.

7 **Q. All right. That's usually the first**  
8 **question somebody asks, but sometimes we like to**  
9 **turn things around.**

10 MR. CARDEN: I'm finished for now. As  
11 the world works, I'll probably come up with  
12 some more questions by the time it comes  
13 back around to me.

14 THE WITNESS: Okay.

15 EXAMINATION BY

16 MR. WOOD:

17 **Q. I'll probably be fairly brief. Again,**  
18 **I'm John Wood from Hughes, Hubbard & Reed. We**  
19 **represent the SIPA Trustee.**

20 **You said earlier that you had a**  
21 **conversation in Bart McDade's office on**  
22 **September 19; is that correct?**

23 A. Yes.

24 **Q. This is a Friday?**

25 A. Correct. Yes.

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 172

1 M. Shapiro

2 **Q. Was anybody else there?**

3 A. Yeah, there were numerous people  
4 there.

5 **Q. Were they all from Lehman?**

6 A. And Weil Gotshal.

7 **Q. Was anybody from Barclays there?**

8 A. Not that I recall.

9 **Q. Or representatives from Barclays?**  
10 **Might have been people from Cleary.**

11 A. No, because these were -- I wasn't  
12 there all day, obviously. I was there for a  
13 given time, maybe it was an hour, something like  
14 that, and these were discussions around -- these  
15 were Lehman-only, Lehman and counsel discussions  
16 about different aspects of the deal that we were  
17 chatting about. So, no, it wasn't in  
18 negotiation with Barclays.

19 **Q. Did you have any conversations with**  
20 **Barclays or their representatives that day?**

21 A. That day? I just don't remember.

22 **Q. Going --**

23 A. I mean, it's possible I did because, I  
24 mean, people were all talking about lots of  
25 different things, you know, throughout so you

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Highly Confidential

Page 173

1 M. Shapiro

2 might run into someone who --

3 **Q. I'm not talking about in the hallway**  
4 **or passing conversations at the bankruptcy**  
5 **court.**

6 A. I don't remember having any direct  
7 discussion on a specific topic as I sit here  
8 today with anyone at Barclays on Friday.

9 **Q. So nothing that you would consider**  
10 **negotiations with Barclays?**

11 A. No, the -- from my vantage point in my  
12 role of the negotiations, all of the  
13 negotiations took place over that night and day,  
14 you know, day, night, day.

15 **Q. Which night?**

16 A. Day of the 15th, night of the 15th,  
17 day of the 16th into the evening on the 16th.  
18 After that, then the next day we really did a  
19 Creditor Committee presentation and I lead that  
20 presentation of what the deal would look like  
21 and we gave information to the Creditors  
22 Committee and their counsel.

23 **Q. Which day was that?**

24 A. 17th before the stalking horse  
25 hearing. So the committee was appointed that

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Highly Confidential

Page 174

1 M. Shapiro  
2 morning.  
3 I think it was either late morning or  
4 early afternoon, I just don't remember the time,  
5 we met with Houlihan, Milbank, some committee  
6 members who were there. It was a huge -- big  
7 rooms. I was basically tasked with explaining  
8 the deal to them, walking them through it,  
9 bringing in people who could help explain any  
10 specifics that they had questions about as a  
11 follow-up matter. So we did that for a couple  
12 of hours.

13 Then we left and they were left  
14 obviously to think about everything and do some  
15 diligence and then we all ended up in court by 5  
16 o'clock.

17 **Q. The deal changed substantially on or**  
18 **around September 19, didn't it?**

19 A. I won't characterize it, but I would  
20 say the deal -- the securities that were being  
21 conveyed in the deal changed I believe on that  
22 date.

23 **Q. And you've already talked about that**  
24 **so I'm going to ask you a different question.**  
25 **Were you involved in any conversations**  
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Highly Confidential

Page 175

1 **M. Shapiro**  
2 **on the 19th involving the possibility of adding**  
3 **additional assets to the definition of**  
4 **"purchased assets"?**

5 A. Adding additional assets? Meaning  
6 conveying more assets to Barclays?

7 **Q. Conveying more assets from Lehman to**  
8 **Barclays?**

9 A. Not that I recall, no.

10 **Q. Do you recall any conversations about**  
11 **the possibility of including Lehman's margin**  
12 **account at the OCC?**

13 A. No.

14 **Q. Any conversations about including**  
15 **funds from Lehman's margin accounts at any other**  
16 **exchanges?**

17 A. I don't remember having any  
18 conversations or even hearing of conversations  
19 about margin accounts and exchanges.

20 **Q. Do you remember any conversations**  
21 **about so-called clearance box assets at DTC?**

22 A. No. The only thing that I heard, and  
23 I don't know if this was clearance box at DTC,  
24 was, you know, was really relating to the  
25 JPMorgan repo. I don't know if that has a

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 176

1 M. Shapiro  
2 relationship to DTC or not, but not, you know,  
3 it wasn't -- the term "clearance box" wasn't the  
4 term that was used. It was really a box and but  
5 it was around the JPMorgan repo, not -- nothing  
6 to do with DTC that I heard about.

7 **Q. I want to show you what's already been**  
8 **marked as Exhibit 25, and this is the signed**  
9 **version of what we referred to as the**  
10 **clarification letter.**

11 A. Okay.

12 **Q. I'm going to show it to you just so**  
13 **you know what I'm talking about here in terms of**  
14 **the term "clearance box assets."**

15 A. Okay.

16 **Q. The term "clearance boxes" is just**  
17 **there in quotation marks at the bottom of page**  
18 **1, about three lines up.**

19 A. Okay. I see what you're talking  
20 about.

21 **Q. Do you have any recollection of any**  
22 **conversations about those assets?**

23 A. Not specifically, no. Only as it  
24 might relate to something that I heard about  
25 JPMorgan doing something and leaving behind in a

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 177

1 M. Shapiro  
2 box -- and I didn't really understand it when  
3 someone mentioned it to me because I wasn't sure  
4 how this all worked -- but leaving behind I  
5 think they called them hammers or nails and  
6 hammers or something like that. I think they  
7 were implying derogatorily about the kinds of  
8 securities that JPMorgan was leaving behind and  
9 had -- and something about JPMorgan had like  
10 left behind for Barclays some crappy securities,  
11 essentially.

12 **Q. Do you remember who said that?**

13 A. Jim Seery.

14 **Q. Did he use the term "cats and dogs"?**

15 A. No, he didn't use "cats and dogs." He  
16 used more like --

17 **Q. Hammers and nails, you think?**

18 A. It was some term that had metal  
19 involved. It was hammers or it was something.  
20 A term I had never actually heard before, but  
21 obviously a term that may be used in the trade  
22 of people who deal in securities.

23 **Q. Do you recall any conversations about**  
24 **whether or not to include these so-called**  
25 **clearance box assets in the deal?**

TSG Reporting - Worldwide 877-702-9580



Highly Confidential

Page 178

1 M. Shapiro

2 A. No idea.

3 **Q. Were you involved in any conversations**  
4 **regarding the inclusion of assets from Lehman's**  
5 **15c3-3 account in the deal?**

6 A. I don't know what a 15c3-3 account is  
7 and I don't believe I had anything to do with  
8 any conversations around whatever that account  
9 is.

10 **Q. If you'll take a look at that same**  
11 **exhibit number 25 on page 4, paragraph 8. And**  
12 **this is just to see whether this refreshes your**  
13 **recollection at all.**

14 **Paragraph 8, little Roman ii, "To the**  
15 **extent permitted by applicable law, and as soon**  
16 **as practicable, after closing, \$769 million of**  
17 **securities is held by or on behalf of LBI on the**  
18 **date hereof pursuant to Rule 15c3-3 of the**  
19 **Securities and Exchange Act" -- I'm sorry, "the**  
20 **Securities Exchange Act of 1934." The sentence**  
21 **continues, but that's just to see if that**  
22 **refreshes your recollection at all.**

23 A. Not at all, no. The only thing I knew  
24 about custody under this paragraph of transfer  
25 of customer accounts was, as explained to the  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 179

1 M. Shapiro

2 court, which was that the customer accounts were  
3 all being transferred because of the SIPA -- by  
4 the SIPAC -- by SIPA to Barclays out of the  
5 estate.

6 And in fact, I do have one  
7 recollection in connection with transferred  
8 accounts where the government had told us not to  
9 file a bankruptcy for LBI until they felt that  
10 all the accounts had actually been successfully  
11 moved out of LBI, or whatever the -- whatever  
12 entity it was, I think it was LBI -- into  
13 Barclays because they didn't want the bankruptcy  
14 to interfere with the transfer of those  
15 accounts. The only thing I recall about that  
16 was that specific fact. It just stuck in my  
17 mind at the time.

18 **Q. And when you say "explained to the**  
19 **court," who did that explanation?**

20 A. During -- I think it was either Harvey  
21 or -- Harvey Miller or Lori Fife who explained  
22 that the accounts were, you know, consistent  
23 with the desires of the SIPA Trustee and the  
24 S.E.C., being transferred from out of the  
25 broker-dealer to let's call it a safe haven. I  
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Highly Confidential

Page 180

1 M. Shapiro

2 think it was Barclays.

3 **Q. Was that explanation --**

4 A. And I actually had a personal interest  
5 in it because I had an account at Lehman which  
6 had a lot of securities and other things in it,  
7 and I wanted -- I obviously wanted to know like  
8 where was my -- where are all these securities.  
9 I had probably a million dollars in securities  
10 held at Lehman and I didn't know where they  
11 were. Obviously had some concern about what  
12 would happen, and so I was personally interested  
13 in like where were these happening.

14 And then very shortly after the deal  
15 closed, I remember getting something that said,  
16 you know, Barclays, you know, I get a notice in  
17 the mail or something and something -- an e-mail  
18 or something saying that Barclays now had taken  
19 over the account and I should contact so and so.  
20 And my broker at Lehman in the interim between  
21 the filing and the deal closing had left and  
22 gone to UBS, so I didn't even have anyone to  
23 call to know what happened.

24 **Q. That explanation in court by Harvey**  
25 **Miller or Lori Fife, do you recall, was that in**

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Highly Confidential

Page 181

1 M. Shapiro

2 **front of Judge Peck while he was --**

3 A. I think everything was in front of  
4 Judge Peck.

5 **Q. While he was in the courtroom?**

6 A. Yes. Presumably, yes.

7 **Q. The reason I'm asking about that, do**  
8 **you recall a recess during which attorneys stood**  
9 **up and explained the substance of the deal to**  
10 **the attendees outside the presence of the judge?**

11 A. This is on Friday?

12 **Q. Yes, Friday the 19th.**

13 A. I remember Lori -- I remember Harvey  
14 and, you know, the judge saying something like,  
15 you know, I've been told by the attorneys that  
16 some changes have been made. Either Mr. Miller  
17 is going to explain them or volunteer one of his  
18 partners to explain it. I believe Lori Fife got  
19 up and then explained the deal.

20 I seem to recall that there might have  
21 been a recess at some point after that, I just  
22 don't have a specific recollection, and I was  
23 not party to it. I was there just sitting in  
24 like on the window ledge next to the -- next to  
25 where people were -- the witnesses were lined

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Highly Confidential

Page 182

1 M. Shapiro  
2 up, just observing, basically.  
3 **Q. As far as you can recall, though, you**  
4 **stayed during any such recess?**  
5 A. I stayed. I didn't leave. Well,  
6 actually I did leave the court at one point.  
7 I'm trying to remember if this was Friday. No,  
8 this was probably on -- I'm trying to remember.  
9 At one point someone asked for the  
10 real estate appraisals, and I knew who had them,  
11 and I can't remember if this was on Wednesday or  
12 Friday. So I did leave the court. The only  
13 time I left the court was to go find the person  
14 who had the real estate appraisals, and I can't  
15 remember if that was on that Wednesday or that  
16 Friday. But that was the only time I left the  
17 court.  
18 **Q. I would like to show you what's**  
19 **already been marked as Exhibit 11. And it**  
20 **doesn't appear that you're on this e-mail.**  
21 A. Okay.  
22 **Q. This is a string of looks like three**  
23 **e-mails. If you look at the one in the middle,**  
24 **the last paragraph there that begins "Weil**  
25 **lawyers"?**

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 183

1 **M. Shapiro**  
2 A. I'm sorry, where are you looking?  
3 MR. STERN: Why don't you read the  
4 whole thing just from top to bottom.  
5 (Document review.)  
6 A. Okay. I know most of the people who  
7 are named in this e-mail, but I've never seen  
8 this e-mail before.  
9 **Q. I understand that. The paragraph**  
10 **there that says, "Weil lawyers a bit out of**  
11 **whack, but granted timing here not unexpected.**  
12 **They didn't explain the balance sheet changes**  
13 **well, but then a Barclays lawyer came in and**  
14 **gave a much better explanation"?**  
15 A. I have no --  
16 **Q. Do you recall --**  
17 A. I have no idea. First of all, this is  
18 a person who had nothing to do with the deal,  
19 for absolute sure. I can tell you that. Dan  
20 Kamensky was a lawyer who worked for the  
21 distressed traders on the fixed income side.  
22 **Q. Do you know whether he was in court,**  
23 **though?**  
24 A. No idea. He might have been in court  
25 because -- he might have been in court only

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 184

1 M. Shapiro  
2 because he's a lawyer who's a former bankruptcy  
3 type who was interested and who worked for the,  
4 effectively, the trading guys and the sales guys  
5 on the distressed side. So I don't know what  
6 kind of information he was trying to ultimately  
7 glean from a business perspective, but --  
8 **Q. But --**  
9 A. So I -- but I don't know what he was  
10 trying to get at here, nor he have an official  
11 role in anything.  
12 **Q. All I'm really interested in is**  
13 **whether you know what this presentation was by a**  
14 **Barclays lawyer.**  
15 A. I do not know.  
16 **Q. Doesn't sound familiar at all?**  
17 A. Well, I believe when they say  
18 "Barclays lawyers," the only the lawyers who  
19 spoke for Barclays, as far as I recall, were  
20 Cleary lawyers. I believe Lindsee Grandfield --  
21 I think that's her name -- the bankruptcy  
22 lawyer, she definitely at one point got up and  
23 spoke or presented something.  
24 **Q. And again --**  
25 A. Look, there's a transcript for the

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Page 185

1 M. Shapiro  
2 hearing, obviously, so I don't -- I don't  
3 remember everything that happened. If you  
4 showed me the transcript and I read it, I might  
5 have a better recollection.  
6 **Q. Actually, what I'm really interested**  
7 **in is if there's anything that's not reflected**  
8 **on the transcript. That's why I was asking**  
9 **about that recess.**  
10 **Do you recall whether during any**  
11 **recess a lawyer representing Barclays got up and**  
12 **explained the deal?**  
13 A. I do not know.  
14 **Q. Did you take any notes during the**  
15 **hearing?**  
16 A. I think I did take some notes, yes.  
17 **Q. Did you keep those notes?**  
18 A. I don't know. I'm not a very  
19 organized person, so I would have to -- it's  
20 possible they're in some pile. I mean,  
21 basically I moved -- I had an office. It's been  
22 moved like three times. I didn't really keep --  
23 because I actually sit on a desk as opposed to  
24 like in an office. So I keep some stuff in the  
25 office. It could be still there. It could be

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 186

1 M. Shapiro  
2 gone. I would have to spend a lot of time  
3 looking.  
4 It was, at best, it was a notepad, on  
5 a notepad like this, and I think the only notes  
6 I took were kind of -- I remember thinking this  
7 is a pretty interesting historical moment. This  
8 is in the courtroom, by the way, the only notes  
9 I took were in the courtroom. And I think I  
10 wrote down a few things that Judge Peck said  
11 because I just thought that they were going to  
12 be quotes that were going to be out there at  
13 some point.  
14 MR. STERN: We'll see if we can find  
15 that.  
16 **Q. Did you have your BlackBerry with you**  
17 **in the courtroom?**  
18 A. Yes.  
19 **Q. Did you send --**  
20 A. You couldn't -- I don't -- I can't  
21 remember if we could use it or not. Yeah, I  
22 think we could use the BlackBerry.  
23 **Q. Mr. Berkenfeld told us that**  
24 **technically you were supposed to check it, but a**  
25 **lot of people brought them in.**  
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Highly Confidential

Page 188

1 M. Shapiro  
2 recall, there was a cash transfer. Under the  
3 revised agreement, I don't believe -- again, I'd  
4 have to review the agreement again in more  
5 detail, but my recollection, my best  
6 recollection is that that was changed and there  
7 was no cash passing hands from Lehman to  
8 Barclays.  
9 **Q. And do you recall how you learned**  
10 **about that change?**  
11 A. I think I heard about that change -- I  
12 heard about that change during the day on  
13 Friday.  
14 **Q. Before court?**  
15 A. Yeah, before -- I think it was in the  
16 afternoon I heard about it, and then it was  
17 actually the whole deal -- I didn't really have  
18 full understanding of the deal because I wasn't,  
19 you know, in Bart's office when they were  
20 finishing it, as I explained earlier. So I  
21 heard what everybody else heard at the time, but  
22 I do have a recollection that the -- that there  
23 was an elimination of the cash transfer.  
24 **Q. And just to be clear, you think you**  
25 **learned about that at that meeting in Bart**  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 187

1 **M. Shapiro**  
2 A. I think I did use it on occasion,  
3 yeah.  
4 **Q. Do you recall sending e-mails?**  
5 A. Yeah, I think I sent a few e-mails.  
6 People were e-mailing me saying like, how's it  
7 going? What's going on? You know, when are you  
8 out of there? And I was kind of just giving  
9 people a very short like, yes, you know, it's  
10 going to be a few more hours.  
11 Everybody obviously who was interested  
12 in like has the deal been approved. I would say  
13 that was the predominant question I was getting  
14 from a few people. I was getting inundated by a  
15 couple of people like has the deal been approved  
16 yet, and I said, no, we're still here.  
17 Obviously the hearing went on from 6 till like 1  
18 in the morning and ultimately got approved,  
19 so -- but, yeah, I definitely responded on  
20 occasion in very short thrift to people who  
21 e-mailed me.  
22 **Q. Under the deal as it was described at**  
23 **the court on September 19, was Lehman supposed**  
24 **to give Barclays any cash?**  
25 A. Under the original agreement, as I  
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Highly Confidential

Page 189

1 **M. Shapiro**  
2 **McDade's office on the 19th?**  
3 A. Again, I'm being a little bit careful  
4 because I don't have a precise recollection.  
5 I'm trying to give you the best --  
6 **Q. That's okay.**  
7 A. -- kind of sense that I remember. I  
8 don't -- if I learned about it, it would have  
9 most likely been in Bart's office at some point  
10 during that day because that's most likely where  
11 it would have come from, is someone -- either  
12 Bart or someone working for Bart or Shafir, you  
13 know, might have been Shafir. I can't tell you  
14 because I don't have a specific recollection.  
15 But it would have most likely have been, you  
16 know, in one of the meetings that I attended in  
17 Bart's office.  
18 **Q. Do you recall who said it?**  
19 A. No. I don't even remember it actually  
20 being said. I just have a recollection that I  
21 knew before the hearing that the cash piece had  
22 been eliminated. I just don't remember where I  
23 got it from.  
24 MR. STERN: Is this a meeting at which  
25 counsel was present?  
TSG Reporting - Worldwide 877-702-9580

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Page 190

1 M. Shapiro  
2 THE WITNESS: Weil Gotshal was pretty  
3 much in Bart's office most of that afternoon  
4 because Mike was doing the contract. And so  
5 whatever changes were happening, he was  
6 sitting there with his computer making  
7 changes. Mike --  
8 What's his name?  
9 MR. STERN: Lubowitz.  
10 THE WITNESS: Lubowitz.  
11 So counsel would have probably been  
12 around.  
13 MR. WOOD: Just to make the record  
14 clear, I'm not intending to ask about any  
15 comments that the lawyers made there.  
16 MR. STERN: I think you already asked  
17 a question about discussions with counsel,  
18 but go ahead.  
19 MR. WOOD: By asking about the  
20 conversation in Mr. McDade's office?  
21 MR. STERN: You're asking about  
22 conversations between the client and their  
23 counsel. It's your choice as to whether you  
24 want to do that.  
25 MR. WOOD: Well, when I asked about  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 191

1 M. Shapiro  
2 the meeting earlier, I don't recall the  
3 witness -- when I asked about the meeting in  
4 Mr. McDade's office, I don't recall the  
5 witness saying originally that anyone from  
6 Weil was there.  
7 THE WITNESS: I think I had said  
8 actually earlier in the testimony actually I  
9 think I had said that.  
10 MR. CARDEN: Anyway, he can't put in  
11 anything from that meeting, so I think we  
12 can move on.  
13 MR. WOOD: He doesn't recall it so we  
14 can move on.  
15 **Q. Do you remember any presentation to**  
16 **the court -- I'm sorry, do you recall any**  
17 **representations to the court regarding whether**  
18 **or not cash would be included in the deal?**  
19 A. I don't remember. When you say  
20 "representations to the court," you mean in the  
21 form of an oral presentation by someone or what  
22 do you mean?  
23 **Q. At all.**  
24 A. Well, the contract spoke for itself  
25 and the motion describing the contract  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 192

1 M. Shapiro  
2 presumably speaks for itself, so whatever they  
3 will say was said and whatever was said in the  
4 hearing on the record was said, I don't --  
5 **Q. Do you recall anything being said --**  
6 A. I don't personally.  
7 **Q. -- orally?**  
8 A. I don't remember anything.  
9 **Q. Okay. The clarification letter you**  
10 **have there, Exhibit 25, have you read that**  
11 **before today?**  
12 A. Yes, I read it in preparation for the  
13 deposition.  
14 **Q. Did you read it before then?**  
15 A. It's possible that I read it when I  
16 got back from California and I asked for a set  
17 of documents. I may have -- I may have looked  
18 at it, but I don't think I like read it, read it  
19 because the deal had been done and I wasn't part  
20 of that negotiation and it said clarification  
21 letter and I wasn't that interested in it.  
22 **Q. Do you recall whether you read it at**  
23 **all over the weekend while you were in**  
24 **California?**  
25 A. No, I definitely did not. I had  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 193

1 M. Shapiro  
2 virtually no communication -- I mean, maybe I  
3 had minor, but I had almost no communication  
4 with anybody from Lehman Brothers over the  
5 weekend.  
6 MR. WOOD: Okay. I don't have  
7 anything else, thanks.  
8 EXAMINATION BY  
9 MS. TAGGART:  
10 **Q. Do you know where Michael Klein is**  
11 **now?**  
12 A. Only -- well, the answer is no.  
13 **Q. What's the last that you heard where**  
14 **Michael Klein was or might be?**  
15 A. I read an article in the paper, when  
16 was it, I don't know when it was, months ago  
17 that he and Sandy Weil might have been forming  
18 some sort of a venture to buy distressed assets  
19 or invest in distressed banks or something like  
20 that.  
21 **Q. Also you talked at the very beginning**  
22 **that when you were setting out to kind of make**  
23 **the deal and put it in some sort of contract**  
24 **form, you had a big -- a structural idea of what**  
25 **that would be.**  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 194

1 M. Shapiro

2 What was your first concept  
3 structurally about what assets were going to be  
4 transferred? Not, obviously, not at a specific  
5 level but kind of when you're first putting  
6 together the deal, what was the criterion you  
7 were looking in what assets might be there?

8 A. At the end of the day, it was really  
9 what the purchaser was willing to buy as opposed  
10 to what I was willing to sell because we didn't  
11 have a lot of choices, obviously. So the  
12 structure of the deal had to be tailored to what  
13 our buyer or buyers, depending on what we had in  
14 hand, and when we started thinking about it, I  
15 didn't know it was going to be Barclays. When I  
16 started working on it, I thought it could either  
17 be B of A or Barclays, had actually written a  
18 short memo to -- an e-mail to Mark Shafir and  
19 Tom Russo and Brad Whitman, who's on the M&A  
20 team, which was a paragraph or two basically  
21 saying that if we couldn't get a deal done with  
22 somebody out of court that maybe we could  
23 actually effectuate a 363 sale in court with a  
24 buyer, either Barclays or BarCap, and I thought  
25 we could actually get something done reasonably

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 196

1 M. Shapiro

2 believed they were buying a going concern with  
3 people who could function to create a going  
4 concern. This is a business where your human  
5 capital walks in and out the door every day, and  
6 that's the most important capital you have, is  
7 the people. So we had to figure out how to  
8 ensure that we were able to convince people to  
9 stick around and not leave while we were getting  
10 this done.

11 Those are probably the general  
12 categories when I started thinking about this.  
13 There were a lot of other assets that Lehman  
14 owned, private equity assets, commercial real  
15 estate, obviously you had the Europe, you had  
16 Asia, and, you know, my view was that, you know,  
17 to actually get a transaction accomplished  
18 within a reasonable period of time, we needed to  
19 keep it as simple as we could because obviously  
20 the simpler it's kept the more easily people can  
21 understand it.

22 Q. Was there a time that you got an  
23 indication of what Barclays was interested in  
24 buying as far as the assets?

25 A. Yeah, I think, as I indicated earlier,  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 195

1 M. Shapiro

2 quickly if we had the support of the regulators.

3 And so I would say that sort of  
4 general construct was, okay, it's going to be an  
5 asset deal of some kind. Then obviously we need  
6 to figure out what assets is your buyer going to  
7 buy. In my simple world, it was buy the  
8 buildings, New York, New Jersey, buy whatever  
9 securities you're prepared to buy, right? And  
10 that was obviously a decision that Barclays had  
11 to make as to what it wanted to buy and Lehman  
12 had to make as to what it wanted to sell, which  
13 wasn't, obviously, within my pursue; deal with  
14 whatever liabilities could be assumed, you know,  
15 in terms of the firm's ongoing businesses and  
16 how we could create -- get Barclays to pick up  
17 the maximum amount of liabilities, because  
18 obviously that would limit what the estate was  
19 responsible for; deal with the contracts, as we  
20 discussed earlier, in terms of assuming the  
21 assigned contracts; deal with the -- deal with  
22 the employees and how they were going to be  
23 treated, because at the end of the day, you  
24 know, I don't think Barclays believed that it  
25 was buying an empty building. I think they

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Highly Confidential

Page 197

1 M. Shapiro

2 at some point Archie Cox and their team said,  
3 you know, we want to buy the building, obviously  
4 we need the buildings in New Jersey, we're  
5 evaluating the securities. Obviously so they  
6 were not committing to what they would or  
7 wouldn't buy. They were doing diligence on  
8 that. There was a whole team of people from  
9 Barclays that were on -- I think they were on  
10 the 31st floor, from what I remember seeing  
11 them, in some offices doing diligence around  
12 different securities, but I really wasn't party  
13 to that.

14 There was the discussion I mentioned  
15 earlier which was more of a generic discussion  
16 about having the right to purchase contracts  
17 that they could assume and assign, but there was  
18 no specificity as to, well, I want this specific  
19 contract, I want that specific contract.

20 At some point during the week they  
21 clearly had a team of people that were starting  
22 to go through that, but that had been an ongoing  
23 effort from them since they had 60 days to  
24 figure it out.

25 Q. How best --

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Highly Confidential

Page 198

1 **M. Shapiro**  
2 **I'm sorry.**  
3 A. I'm just thinking. As you're asking,  
4 I'm just thinking about your question.  
5 In terms of assets --  
6 **Q. Let's talk about the securities in**  
7 **particular.**  
8 A. Sure.  
9 **Q. When did that evaluation of securities**  
10 **end so that Barclays had made a decision about**  
11 **what securities it wanted to buy?**  
12 A. Well, I would say it was -- it seemed  
13 to me that it was an ongoing process that really  
14 took place throughout the week because it was  
15 not just what Barclays could buy, but what  
16 Lehman could convey, right?  
17 As I indicated earlier, I was  
18 personally very focused on making sure that  
19 everyone understood. You know, there weren't  
20 very many people who had ever worked on a  
21 bankruptcy deal, and I just wanted people to  
22 understand that we could only convey what we had  
23 right, title and interest to convey,  
24 notwithstanding bankruptcy.  
25 And so it was very important that  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 199

1 **M. Shapiro**  
2 everyone make sure that they try to get the  
3 facts as right as they could under the  
4 circumstances and be able to convey, you know,  
5 what we had right, title and interest in, not  
6 subject to a lien, et cetera.  
7 So, in light of the size of the Lehman  
8 Brothers balance sheet, it was taking time to  
9 evaluate that from both side's perspective, time  
10 in terms of understanding what they were, time  
11 in terms of presumably understanding what each  
12 side believed the marks to be, et cetera.  
13 So that was an ongoing process that  
14 did not end when we left court on Wednesday  
15 where they were named the stalking horse and  
16 they clearly, if we had tried to convey to them  
17 securities that we didn't have title to, for  
18 example, they could have said, no, we don't have  
19 to close.  
20 So I believe, you know, the changes  
21 that were ultimately made to the contract  
22 reflect the fact that the facts had continued to  
23 change from Monday to Friday based on what we  
24 believed to be a snapshot on call it the middle  
25 of the night on Monday. The contract was  
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Page 200

1 **M. Shapiro**  
2 drafted, as it said, on Tuesday, and then as  
3 Wednesday when we were in court, and then over  
4 the -- but facts had continued to change,  
5 obviously, facts were continuing to change post  
6 the hearing, and therefore people ultimately got  
7 to a different set of securities that ultimately  
8 were conveyed by Friday.  
9 **Q. What, if anything, was decided about**  
10 **what securities would be conveyed as of the**  
11 **signing of the APA?**  
12 A. I'm not sure I understand your  
13 question.  
14 MR. STERN: Objection as to form.  
15 **Q. Well, let's look at it.**  
16 A. Okay.  
17 **Q. It's Exhibit 1, and you can go to page**  
18 **6.**  
19 A. I'm sorry, I'm looking at this  
20 exhibit. Is this what you're talking about?  
21 MR. STERN: Let me get Exhibit 1.  
22 **Q. So if you turn to page 6, in**  
23 **particular on Purchased Assets, and let's start**  
24 **on section D, which starts with government**  
25 **securities, commercial paper, corporate debt.**  
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Highly Confidential

Page 201

1 **M. Shapiro**  
2 A. Yeah. Okay. I'm looking at that  
3 section.  
4 **Q. Sure. Go ahead. Sorry.**  
5 **What was your understanding of what**  
6 **was being agreed to with Section D?**  
7 A. What it says: That the purchased  
8 assets included government securities,  
9 commercial paper, corporate debt, corporate  
10 equity, exchange-traded derivatives, short-term  
11 agreements that had a book value of  
12 approximately 70 billion, and that that group  
13 obviously was I'll call it generically described  
14 in this provision, let's call it the backing of  
15 that, the information from which that was  
16 derived obviously was for people who were in the  
17 securities area and who at the time were using  
18 that sheet that we talked about earlier, that --  
19 I forget what the exhibit is.  
20 **Q. 19.**  
21 A. Exhibit 91, we were using that as a  
22 shorthand way to categorize and put down on a  
23 piece of paper what both sides believed were  
24 going to be transferred that were, you know,  
25 theoretically, at that point in time, owned by  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 202

1 M. Shapiro  
2 Lehman Brothers.  
3 **Q. Was it your understanding that there**  
4 **was some sort of bucket of assets that there was**  
5 **an agreement as of the time of the signing of**  
6 **the APA would be transferred?**  
7 MR. STERN: Objection.  
8 **Q. That is being described in subsection**  
9 **D?**  
10 MR. STERN: Objection to the form.  
11 A. I'm not sure I understand your  
12 question.  
13 **Q. Is subsection D meant to describe an**  
14 **actual set of securities that is in any way had**  
15 **already been determined as of the signing of the**  
16 **APA?**  
17 A. I'm still not -- subsection D  
18 describes what both sides believed to be the  
19 types, kinds and magnitude of the securities  
20 that Barclays, as the buyer, Lehman, as the  
21 seller, believed could be conveyed to Barclays  
22 under this contract as of -- as of the time we  
23 signed it, which was, you know, as I said, about  
24 10:30 on that Tuesday night, the 16th.  
25 **Q. I guess what I'm trying to get at, I**  
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Highly Confidential

Page 203

1 **M. Shapiro**  
2 **understand that things were pretty fluid, and**  
3 **when you were talking about contracts, there's a**  
4 **whole process that's in this contract where**  
5 **you're going to review contracts and evaluate**  
6 **and choose.**  
7 A. Right.  
8 **Q. But when it comes to the securities,**  
9 **first of all, you're not describing a process of**  
10 **choosing securities in a contract, right?**  
11 A. That's correct.  
12 MR. STERN: Wait. Wait. Wait. I  
13 just want a standing objection to the form.  
14 **Q. And was it your understanding there**  
15 **was an agreement that there would be conveyed**  
16 **some bucket of assets that had a value at that**  
17 **date of \$70 billion?**  
18 MR. STERN: Objection to the form.  
19 Can you read the question?  
20 (Record read.)  
21 A. I can't speak to an agreement as to  
22 value. I can only say that I believed the  
23 parties intended by this provision D that  
24 this -- these categories of securities, meaning  
25 government securities, commercial paper, et  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 204

1 M. Shapiro  
2 cetera, as described in Exhibit D, which I  
3 believe Lehman had a book value with respect to  
4 such securities of \$70 billion as of that night,  
5 that that's what the parties agreed were the --  
6 were the securities to be transferred on the  
7 asset side.  
8 **Q. Well, were there actually securities**  
9 **that had been agreed as of the signing of the**  
10 **APA to be transferred?**  
11 MR. STERN: Objection to the form.  
12 A. When you say "were there securities,"  
13 I'm not sure what you mean by that.  
14 **Q. I'm trying to find out what's -- I**  
15 **think you mentioned, I was trying to check my**  
16 **notes, that when you were drafting, you were**  
17 **trying to make sure that it really delineated**  
18 **what was agreed to?**  
19 A. Yes.  
20 MR. STERN: That's the question?  
21 A. Your question was were we trying to  
22 accurately reflect what was agreed?  
23 **Q. Yes. Sure.**  
24 A. I would hope we were trying, yeah.  
25 **Q. So I understand that this describes**  
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Page 205

1 **M. Shapiro**  
2 **some things, and I want to find out in what way**  
3 **you think you're describing. First of all, were**  
4 **there at the time of the signing of the APA**  
5 **actual securities, a bucket of securities that**  
6 **are being described by subsection D?**  
7 MR. STERN: Objection to the form, but  
8 you can answer.  
9 A. I can only state what I know as a  
10 matter of fact personally, which was that it was  
11 represented by people who were going through the  
12 reames of data that provided the description of  
13 securities and however they were categorizing it  
14 that the information we were given was that  
15 these securities as described in this form were  
16 available to be conveyed as of that time by  
17 Lehman to Barclays.  
18 As I think I indicated in earlier  
19 testimony, the facts on the ground changed  
20 significantly because not only were some of the  
21 securities that Lehman -- that people at Lehman  
22 may have believed were owned by Lehman as of  
23 that moment in time, they learned later during  
24 the week that maybe they weren't necessarily  
25 owned, they might have been sold, trades were  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 206

1 M. Shapiro  
2 closing, people were getting blown out.  
3 So, you know, this is a trading  
4 business, right? I think if you stepped into  
5 any trading business, you would learn very  
6 quickly that it's very hard to absolutely know  
7 with absolute certainty as of a given minute  
8 exactly what you have and that's why I think  
9 this says "approximately 70 billion." It gives  
10 categories of securities.  
11 In the 24 hours we had, I think this  
12 was the best we could do as a description within  
13 a contract. That didn't mean that people  
14 didn't, from a business perspective, have the  
15 backup for what they believed to be able to be  
16 conveyed as of that date. They did, but then,  
17 as I indicated, as they learned more about what  
18 was happening to Lehman over the course of the  
19 next few days, those changed.  
20 **Q. Is it your understanding that what's**  
21 **being described here is an intent to convey any**  
22 **of these categories, government securities,**  
23 **commercial paper, et cetera, that can be**  
24 **conveyed?**  
25 MR. STERN: Objection to the form.  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 207

1 M. Shapiro  
2 A. If we couldn't convey them, we  
3 couldn't make the representations that we make  
4 in the contract so we wouldn't have been able to  
5 actually close the deal. So obviously you  
6 can't -- often you enter into a contract where,  
7 on the day you enter into the contract, you say  
8 something, but then you have to bring the rep  
9 down at closing.  
10 And this is not a rep that could have  
11 been brought down at closing in terms of being  
12 able to convey to them right, title and interest  
13 to these specific securities as they had  
14 identified them as of that date because there  
15 were things that changed about those securities.  
16 **Q. I understand you think whether it's**  
17 **implicit or just known in the industry that you**  
18 **cannot convey ones that you don't have title to,**  
19 **that's going to be a limitation --**  
20 MR. STERN: Wait. I'm waiting to hear  
21 the question.  
22 **Q. That would be a limitation that you**  
23 **think is built into this deal, right?**  
24 MR. STERN: Objection to the form.  
25 Can I hear the question?  
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Highly Confidential

Page 208

1 M. Shapiro  
2 (Record read.)  
3 MR. STERN: That's the question.  
4 **Q. Maybe I can put it another way.**  
5 A. Okay.  
6 **Q. In what way, as a contractual matter,**  
7 **would Lehman breach this provision?**  
8 A. Okay. So if you were to look at  
9 Section 5.4 of the contract, it says "Title to  
10 Purchased Assets," and it says, "Other than the  
11 real property...intellectual property...Seller  
12 owns each of the purchased assets, the Seller --  
13 and Purchaser will be vested with good and  
14 exclusive titles to such Purchased Assets, free  
15 and clear of all Liens, other than Permitted  
16 Exceptions, to the fullest extent permitted  
17 under Section 363."  
18 So I would call that a reasonably  
19 standard provision in a sale contract, and  
20 basically it means that you have to convey good  
21 title to your buyer or your buyer either doesn't  
22 have to close or can sue you for breach of  
23 contract if you close and deliver him an asset  
24 that you didn't have the right to convey.  
25 **Q. How would Lehman breach this provision**  
TSG Reporting - Worldwide 877-702-9580

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Page 209

1 M. Shapiro  
2 **of the contract?**  
3 MR. STERN: Objection to the form.  
4 You can try to answer.  
5 A. Well, my fear was they could have  
6 breached it, or possibly could have breached it  
7 if they agreed to let's call it a set of  
8 securities that existed in their books and  
9 records as reflected by traders and other people  
10 who were in control of those records as of the  
11 date that we signed this that in fact things  
12 were happening that were well beyond the  
13 knowledge of those of the lawyers drafting this  
14 contract in the context of the trading business,  
15 which actually did occur, and therefore, we were  
16 making -- then if you can't know that an asset  
17 that you are trying to convey you actually have  
18 title to because either (A) you already sold it  
19 to somebody else or (B) someone took it from you  
20 because you had repoed it and you didn't -- and  
21 the repo was taken, you know, the repo was  
22 terminated and the security was taken and,  
23 therefore, while on your books and records you  
24 might have shown that as an asset you owned  
25 subject to the repo, by the time Friday came  
TSG Reporting - Worldwide 877-702-9580



Highly Confidential

Page 210

1 M. Shapiro  
2 along, you no longer owned it because the repo  
3 had been blown out.  
4 So things like that concerned me about  
5 making sure that we were able to make the rep at  
6 closing.  
7 **Q. On the page 6, though, the description**  
8 **of purchased assets, I think that you have**  
9 **mentioned that there's no schedule attached of**  
10 **the assets that are going to be conveyed, right?**  
11 A. Yeah, the only schedule that was in  
12 any way referenced that had let's say a  
13 relationship to this was the schedule we  
14 previously talked about.  
15 **Q. And that even wasn't attached --**  
16 A. That was not a party to the contract.  
17 That was just a referred to schedule.  
18 **Q. And I believe this -- you said this**  
19 **value of approximately 70 billion, did you**  
20 **believe there was actually an agreement that**  
21 **securities valued at 70 billion would be**  
22 **conveyed? Is that the way you read this?**  
23 A. What it says is what I believe was  
24 agreed to.  
25 **Q. So Lehman is agreeing to give assets**  
TSG Reporting - Worldwide 877-702-9580

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Page 211

1 M. Shapiro  
2 **that have this description, government**  
3 **securities, commercial paper, that are valued as**  
4 **of -- at approximately \$70 billion as of the**  
5 **signing of the APA?**  
6 MR. STERN: Objection to the form.  
7 A. Lehman agreed to sell to Barclays the  
8 securities that were described in Section D in  
9 accordance with the terms of this agreement as  
10 part of this agreement.  
11 **Q. Do you see there's not much**  
12 **description about what those assets are, right?**  
13 MR. STERN: Objection to the form.  
14 A. If you're asking could there -- could  
15 there have been more detail behind each of these  
16 if this deal was done in the course of a let's  
17 say a month and you had lots of time, I guess  
18 probably the answer would be yes, but since this  
19 deal was done in a week, and because you were  
20 dealing with a moving -- a moving target in the  
21 sense as I described earlier, some of the  
22 securities that were trying to be conveyed were  
23 being changed on the ground, this was the best  
24 that the lawyers could do to reflect the  
25 business agreement, which I believe it does  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 212

1 M. Shapiro  
2 accurately reflect as of that Tuesday night what  
3 people had agreed to, that obviously that was  
4 required to be changed because of the fact both  
5 sides recognized that this description no longer  
6 accurately reflected what could be conveyed as  
7 of Friday.  
8 **Q. We also talked or you spoke earlier**  
9 **about how the liabilities were at 69 billion,**  
10 **approximately, and the conveyed assets was 70**  
11 **billion, right?**  
12 A. Yeah, those two -- there was obviously  
13 a linkage because the liabilities were, you  
14 know, were financings of these securities, for  
15 the most part, as I understood it.  
16 **Q. Was it your understanding that, in**  
17 **making this deal, that there were going to be**  
18 **some parity between the assets and the**  
19 **liabilities?**  
20 MR. STERN: Objection to the form.  
21 A. I don't really know what you mean by  
22 "parity." I think as I described it earlier,  
23 just in terms of the facts as I knew them, there  
24 was a number which was approximately 70 billion  
25 in this contract which was reflecting that  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 213

1 M. Shapiro  
2 schedule that said around 72 billion. There  
3 was -- on the asset side. On the liability  
4 side, this says I think approximately 69  
5 million. The schedule reflected around 68.4,  
6 69.4. I don't remember what it said, again,  
7 approximately.  
8 The difference between the two would  
9 generally reflect I think the fact that you've  
10 never financed 100 percent of the positions that  
11 you were buying, right? Everything was  
12 haircuted a bit.  
13 So I -- you're asking me the question,  
14 was there a difference between the asset side and  
15 the liability side, yeah, but I would have  
16 expected that.  
17 **Q. Let's look at Exhibit 19. Do you**  
18 **still have that in front of you?**  
19 MR. STERN: No, but we'll get it out.  
20 **Q. I'm also going to show you what's**  
21 **previously been marked as Exhibit 18.**  
22 **First, for the record, do you**  
23 **recognize Exhibit 18?**  
24 A. They look very similar to me, so when  
25 you say do I recognize it, I don't have a  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 214

1 M. Shapiro  
2 specific recollection of it, other than  
3 generally I am familiar with this schedule as it  
4 kind of looks like the last schedule I looked  
5 at.  
6 **Q. You see they look similar. They have**  
7 **columns. There's assets --**  
8 A. Yeah.  
9 **Q. -- and liabilities?**  
10 A. Yeah.  
11 **Q. And similar categories, right?**  
12 A. Yes.  
13 **Q. And some changes in the numbers?**  
14 A. Yeah, one looks like it was done at  
15 11:18, one looks like it was done 10:09.  
16 **Q. And I believe you said there was a**  
17 **number of iterations of this type of**  
18 **spreadsheet, right?**  
19 A. I believe there were multiple  
20 iterations of it.  
21 **Q. You notice that on both Exhibit 18 and**  
22 **Exhibit 19 the assets and liabilities are the**  
23 **same, right?**  
24 A. Let's see. No, they're not the same.  
25 Well, when you say they're the same, meaning the  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 215

1 M. Shapiro  
2 same categories? What do you mean by "the  
3 same"?  
4 **Q. In both Exhibit 18 and Exhibit 19, the**  
5 **totals of the assets match the totals of the**  
6 **liabilities in that exhibit?**  
7 A. No, I don't agree with what you just  
8 said, unless I don't understand what you just  
9 said, which is probably --  
10 **Q. Well, let's look at Exhibit 18.**  
11 A. Let's just take the first column of  
12 assets. So I see government and AG, agencies,  
13 40 billion. Commercial paper, 1.1. That's the  
14 same. Mortgages, 2.9 versus 2.7.  
15 **Q. I just mean the totals. So let me try**  
16 **to ask that again. Let's just start with**  
17 **Exhibit --**  
18 A. Total dollars? What are we talking  
19 about when you say "total"? Can you be more  
20 precise?  
21 **Q. Let's start with Exhibit 18. On the**  
22 **bottom, the number for adjusted total assets is**  
23 **73.15, which I believe is billions of dollars,**  
24 **right?**  
25 A. Yes.  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 216

1 M. Shapiro  
2 **Q. And that's also the total that's**  
3 **listed under liabilities, 73.15?**  
4 A. Those two numbers match, correct.  
5 **Q. And in Exhibit 19 the totals also**  
6 **match, where the total assets is 72.65 and then**  
7 **the total liabilities is 72.65 also, right?**  
8 A. Those numbers are the same, I agree.  
9 **Q. Do you remember in previous iterations**  
10 **of this document whether the assets and**  
11 **liabilities also matched each other?**  
12 A. I think, again, as I said, there were  
13 multiple of these documents. I think that there  
14 were times when they didn't match, but I can't  
15 be absolutely sure of that, but I think that  
16 there were.  
17 **Q. And do you know if going into signing**  
18 **the APA the understanding was, although these**  
19 **numbers might change, there would be a matching**  
20 **between the assets that were conveyed and the**  
21 **liabilities that were assumed?**  
22 MR. STERN: Objection to the form.  
23 Let me hear the question again.  
24 (Record read.)  
25 A. I don't know the answer to your  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 217

1 M. Shapiro  
2 question.  
3 **Q. You also mentioned, I think you said**  
4 **that you would expect the liabilities to be a**  
5 **little bit less than the assets for what you**  
6 **described as a haircut; is that right?**  
7 MR. STERN: Objection to the form.  
8 A. What I described is that when people  
9 typically finance an asset, when financial  
10 institutions finances an asset, it doesn't  
11 usually lend 100 cents on the dollar because if  
12 the asset value goes down, then they're  
13 out-of-pocket. So usually they have some  
14 cushion for what's known as a haircut so that  
15 before when they lend, they only lend a portion  
16 of the asset value. So it didn't surprise me  
17 that we had that differential since we were  
18 talking about a book.  
19 **Q. And do you mean that on a**  
20 **particular -- each individual security?**  
21 A. Sure.  
22 **Q. So a security would have an asset but**  
23 **the liability of it would be a little bit less**  
24 **for each individual security?**  
25 A. Depending --  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 218

1 M. Shapiro  
2 MR. STERN: Objection to the form.  
3 Can I hear the question again?  
4 (Record read.)  
5 MR. STERN: Objection to the form.  
6 Are you talking about generally speaking?  
7 Are you talking about specifically to this  
8 set of assets?  
9 **Q. I'm first trying to find out about**  
10 **your general understanding that you think**  
11 **usually in some transaction that the assets will**  
12 **be a little bit more than the liability to**  
13 **reflect a risk or financing?**  
14 MR. STERN: Objection to the form.  
15 Look, I've been very patient, but I think  
16 these questions are very misleading. I  
17 don't even where you get the "little bit  
18 less" from.  
19 A. Can I hear the question again? I'm  
20 not sure what the question is.  
21 (Record read.)  
22 A. I think you should restate your  
23 question because I don't really understand it.  
24 **Q. I'm just trying to first understand**  
25 **your understanding about the way that assets and**  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 219

1 **M. Shapiro**  
2 **liabilities interact.**  
3 A. Okay.  
4 **Q. So maybe you could state it again.**  
5 **For this transaction for the APA, what**  
6 **was your understanding of what you expected the**  
7 **relationship between assets and liabilities**  
8 **would be?**  
9 A. Okay. I had no -- I had no  
10 understanding specifically to these assets of  
11 what they should be, which is really what you're  
12 getting at. I think what I was explaining to  
13 you is that, generally speaking, in the  
14 commercial financing area, you find that  
15 institutions are not willing to lend necessarily  
16 the full market value, 100 cents on the dollar,  
17 against the security that they are financing  
18 because they are worried, potentially, that they  
19 would have to take a haircut, take a hit if the  
20 value of that security goes down.  
21 So people typically lend at some  
22 margin, some margin less than, generally  
23 speaking, and I'm not referring to this specific  
24 transaction and the securities involved here, so  
25 then my second statement, which was it didn't  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 220

1 M. Shapiro  
2 surprise me that there was a difference between  
3 the stated marked value of the assets in the APA  
4 and the stated liabilities being assumed  
5 associated with them and that there was a  
6 difference between the two, that didn't surprise  
7 me for the reason I just stated.  
8 **Q. But you don't --**  
9 A. I have no personal knowledge as to  
10 what amount of financing was specifically  
11 associated with each security that fell within  
12 the baskets of each of these categories that  
13 were to be conveyed. Hopefully that answers  
14 your question.  
15 **Q. You don't know one way or another**  
16 **whether that general commercial practice**  
17 **explains the difference between the liabilities**  
18 **and the assets in this case?**  
19 A. I do not, no.  
20 **Q. Also, if you look at the definition --**  
21 **Let's go back to 6 of "Purchased**  
22 **Assets."**  
23 MR. STERN: We're on Exhibit 1?  
24 **Q. Exhibit 1, page 6, subsection D under**  
25 **"Purchased Assets." You'll see -- well, that 70**  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 221

1 **M. Shapiro**  
2 **billion, that approximate, do you know if that**  
3 **includes what's listed on Exhibit 19 as**  
4 **mortgages?**  
5 A. Can I see Exhibit 19?  
6 MR. STERN: We're on page 6 at what  
7 point? What's the question? Do you mind  
8 telling me what you're focusing on?  
9 MS. TAGGART: It's the same provision  
10 that I've been talking about.  
11 MR. STERN: Can you just tell me what  
12 it is as a courtesy? I'm looking at the  
13 page. I was getting an exhibit so now I'm  
14 looking at the page. Can you tell me what I  
15 should be looking at?  
16 MS. TAGGART: It's page 6, the  
17 definition of "Purchased Assets," subsection  
18 D.  
19 MR. STERN: Thank you.  
20 A. Could you repeat the question?  
21 (Record read.)  
22 MR. STERN: Objection to the form.  
23 A. As I testified earlier today, the  
24 approximately \$70 billion that's referenced in  
25 section D on page 6 relates to the 72.65 number  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 222

1 M. Shapiro  
2 that's under the "adjusted total assets" line  
3 since -- since the 72.65 is the total of the  
4 62.7 and the 10, which obviously doesn't exactly  
5 add up, which is approximately 72.65. The  
6 bottom -- the first column totals 62.7. The  
7 second column shows 10. If you add those two  
8 up, you get to 72.7. This says 72.65. My only  
9 point is that the mortgages -- you were  
10 referring to mortgages of 2.7 in that line.  
11 It's subsumed within the 72.65.

12 **Q. Well, in subsection E of page 6, which**  
13 **is "Purchased Assets," it talks about 50 percent**  
14 **of each position in the residential real estate**  
15 **mortgage securities. Do you see that?**

16 A. Yes.

17 **Q. Do you know if there's any**  
18 **relationship between that and what's described**  
19 **in Exhibit 19 as mortgages under "Assets"?**

20 A. My recollection is that the resis,  
21 what was called the resis, were being treated  
22 separately. And "resis" I think is shorthand  
23 when people are talking about them for the  
24 residential real estate mortgages, that those  
25 were not being treated as part of this asset

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 223

1 M. Shapiro  
2 group; they were being dealt with separately.

3 **Q. So your understanding is that the**  
4 **mortgages described on Exhibit 19 are different**  
5 **than the mortgages that are described on page 6,**  
6 **the definition of "purchased assets," subsection**  
7 **E?**

8 A. To the best of my recollection, I  
9 don't think that the resis were necessarily  
10 included in the assets that are described here,  
11 but the only thing I would say is that I was not  
12 the person who was in any way putting the  
13 information together around what securities  
14 actually went into each of these buckets, so I  
15 can't be sure. But that's what I -- that's the  
16 best recollection I have.

17 **Q. Were you involved at all in the**  
18 **discussions or negotiations about what resis**  
19 **were going to be conveyed?**

20 A. No, there was some discussions about  
21 would Barclays take resis, would Barclays not  
22 take resis. I have a recollection of the  
23 discussion. I don't remember -- I was not  
24 personally involved in those discussions, no.

25 I believe Bart, Mark Shafir, maybe  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 224

1 M. Shapiro  
2 others, but it wasn't me.

3 **Q. You described earlier that you thought**  
4 **that JPMC was I think you used the term "a bad**  
5 **actor"?**

6 A. From my perspective.

7 **Q. Can you describe why you used that**  
8 **term?**

9 A. Well, I thought that they -- they,  
10 before the bankruptcy, they were the ones who  
11 took the liquidity out of Lehman Brothers by  
12 virtue of the demand that they made on Lehman  
13 Brothers in the week that led up to the  
14 bankruptcy.

15 So Lehman Brothers started the week  
16 with \$40 billion of liquid capital in the bank  
17 accounts, and by the end of the week, we had  
18 virtually none of it and, you know, to the point  
19 where we had to send them a nasty letter on -- I  
20 think it was on Friday or Saturday asking them  
21 to allow us to wire \$20 million to Weil Gotshal  
22 for retainer.

23 And one of the things that I learned  
24 in the course of getting involved that Thursday  
25 when I sat down with a number of the lawyers who

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 225

1 M. Shapiro  
2 had worked for Treasury and I was trying to  
3 understand, you know, what kind of cash we had,  
4 is I learned that they had required the firm to  
5 enter into a letter agreement that required --  
6 allowed them to set off any cash that they were  
7 holding against any exposures that they had  
8 across any agreement that they had with Lehman  
9 Brothers, which they didn't have the right to  
10 before that agreement was entered into, they  
11 only had it as it related to their clearing  
12 obligations.

13 I believe that they used their  
14 monopoly position as a clearing bank to extract  
15 that agreement from Lehman Brothers, and that  
16 allowed them to basically take the position that  
17 any assets that Lehman had at JPMorgan and the  
18 cash that was being held by JPMorgan anywhere  
19 could be set off against any obligation that  
20 Lehman Brothers had to JPMorgan anywhere, and  
21 that that was the, in my view, the final blow to  
22 Lehman Brothers.

23 So I'm not saying that they  
24 necessarily did anything wrong legally. I'm  
25 just saying that I believe that they were a key

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 226

1 M. Shapiro  
2 reason why Lehman's liquidity ran dry.  
3 **Q. What's that based on? What's your**  
4 **understanding based on the facts that you've**  
5 **got?**  
6 A. What I just described. What I was  
7 told by other people in the firm and the  
8 agreement that I actually saw.  
9 **Q. Who did you talk to about it?**  
10 A. I talked to -- there were, on the  
11 agreement itself, I talked to a number of  
12 lawyers who were lawyers for the Treasury Group  
13 who, when I was basically doing some of my own  
14 due diligence to figure out what were we dealing  
15 with here on Friday, they told me about --  
16 **Q. Let's not talk about what you talked**  
17 **with lawyers for now.**  
18 MR. STERN: No, wait. I think he is  
19 entitled -- you asked a question. He's  
20 entitled to give an answer. There was no  
21 instruction from either of Lehman's  
22 counsel --  
23 MR. CARDEN: We just got to the  
24 lawyers.  
25 MS. TAGGART: I just asked who he  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 228

1 M. Shapiro  
2 make -- were you involved in any changes to the  
3 contract with Barclays after the court hearing  
4 on September 19?  
5 A. No, I was not.  
6 **Q. Also earlier today you spoke about**  
7 **the -- how there was originally a provision that**  
8 **was, I believe, provision 3.3, the adjustment to**  
9 **the cash amount, and it was your understanding**  
10 **it was eventually eliminated in the revised**  
11 **deal?**  
12 A. That's my recollection.  
13 **Q. Do you know when there was the**  
14 **decision to revise that part?**  
15 A. Well, I don't know -- I don't know  
16 when this is meant to actually revise just that  
17 specific part. As I indicated, I think that  
18 there was an overall agreement on making changes  
19 to this that happened on that either Thursday or  
20 that more likely to be actually -- was actually  
21 agreed to on that Friday.  
22 **Q. You also mentioned earlier today that**  
23 **you had spoken with Mark Kelly and --**  
24 A. Martin Kelly.  
25 **Q. Martin Kelly, excuse me.**  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 227

1 M. Shapiro  
2 spoke with. If you want to -- I just don't  
3 want to hear later that you -- right now I  
4 am not asking for what he spoke with any  
5 lawyers about. If you want him to go ahead  
6 and answer, that's fine, but I want it to be  
7 clear --  
8 MR. STERN: No, it's not my choice.  
9 I'm not asking the questions.  
10 MS. TAGGART: My question was not what  
11 was said. My question was who did you speak  
12 with.  
13 MR. STERN: I'm going to wait for the  
14 next question.  
15 MS. TAGGART: Well, that's fine.  
16 **Q. Is there anyone else that you spoke**  
17 **with on this topic about the JPMC issue?**  
18 A. Outside of lawyers?  
19 **Q. Outside of lawyers.**  
20 A. I believe I told a few other people  
21 about it and how I was absolutely shocked that  
22 we would let that happen, and that I think I --  
23 I think I characterized it as sort of  
24 ridiculously stupid on our part.  
25 **Q. Just to make the record clear, did you**  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 229

1 M. Shapiro  
2 -- to try to get an understanding of,  
3 if the securities were sold, if it was possible  
4 to value them based on if Lehman was not  
5 purchased and was liquidated?  
6 A. I don't believe --  
7 MR. STERN: Objection to the form.  
8 Can I hear that question again?  
9 (Record read.)  
10 A. I'll --  
11 MR. STERN: Is there a question?  
12 Wait. I'm not quite sure.  
13 **Q. Was that your testimony earlier today?**  
14 A. I'm not sure what the question is that  
15 you asked me. I think I know what it is and I  
16 would restate the question if you would like me  
17 to.  
18 **Q. No, I -- we can -- why don't you**  
19 **say --**  
20 A. I don't understand your question.  
21 MR. STERN: Let her ask questions and  
22 you give answers.  
23 THE WITNESS: Fine.  
24 **Q. Can you describe what the conversation**  
25 **was that you had with Martin Kelly on the**  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 230

1 **M. Shapiro**  
2 **subject of valuation if Lehman was not**  
3 **purchased?**  
4 A. Yeah, I don't think it was necessarily  
5 just Martin Kelly. I just can't remember. I  
6 think he was involved in those discussions.  
7 What we were trying to do was find the  
8 right people at Lehman Brothers who could -- and  
9 it wasn't one person, it was groups of people --  
10 who were responsible for trading and, you know,  
11 and managing the portfolios of these different  
12 categories of securities so that Barry Ridings  
13 could meet with these people and get their  
14 perspective on how they believed those  
15 securities -- what those securities might end up  
16 being worth if Lehman was forced to sell those  
17 securities in the near term.  
18 And so Martin was one of I think a  
19 number of people that helped us organize  
20 different people in the firm to meet with Barry  
21 Ridings on I believe Thursday and Friday to --  
22 so he could evaluate what would happen if this  
23 transaction did not complete and what the  
24 potential loss in value to the estate might be  
25 if a forced sale of these securities were to  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 232

1 M. Shapiro  
2 Income, not always, and I think there was some  
3 derivatives people. I don't remember all the  
4 people, no. These are not people that for the  
5 most part I knew. I knew a few of them.  
6 **Q. Did you ever communicate about the**  
7 **results of that evaluation with Mr. Ridings or**  
8 **anyone else?**  
9 A. Not specifically, other than listening  
10 to his testimony in court where I think he  
11 testified as to his view of what they might --  
12 what might happen if the transaction didn't  
13 close and Lehman was liquidated and those  
14 securities were liquidated. I think he  
15 testified on that.  
16 (Continued on the next page to include  
17 the jurat.)  
18  
19  
20  
21  
22  
23  
24  
25

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Page 231

1 M. Shapiro  
2 take place.  
3 **Q. Who is Barry Ridings?**  
4 A. Barry Ridings. He's the senior  
5 partner and investment banker at Lazard.  
6 **Q. I'm laughing. It's a West Coast**  
7 **thing. I can't say the difference between Barry**  
8 **and berry.**  
9 **And the Thursday and Friday, is that**  
10 **the 18th and 19th?**  
11 A. I believe -- it would have been -- it  
12 would have been the 18th or the 19th, I believe,  
13 yes. It could have been earlier, too. I just  
14 don't have a specific recollection, but I think  
15 it was during those, you know, during the course  
16 of this week. I don't remember exactly what  
17 days he actually did that. He would have a  
18 better recollection of what days he did it, but  
19 it was during the course of that week.  
20 **Q. Do you know any other people who were**  
21 **involved in that evaluation?**  
22 A. I believe he spoke to -- I believe on  
23 some of this he spoke to Felder, probably  
24 Gelband, Alex Kirk, you know, different people  
25 who, within the Fixed Income, mostly Fixed  
TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 233

1 M. Shapiro  
2 **Q. Did you see any documents associated**  
3 **with that evaluation?**  
4 A. No.  
5 MS. TAGGART: That's all my questions.  
6 Thank you.  
7 MR. STERN: Anybody else?  
8 MR. CARDEN: You're a free man.  
9 MR. STERN: I think were done.  
10 THE WITNESS: Okay, thanks.  
11 (Time Noted: 2:42 P.M.)  
12 oOo  
13  
14  
15  
16  
17

MARK J. SHAPIRO

18  
19 Subscribed and sworn to  
20 before me this day  
21 of 2009.

TSG Reporting - Worldwide 877-702-9580

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Page 234

1 M. Shapiro  
2 CERTIFICATE  
3 STATE OF NEW YORK )  
: ss  
4 COUNTY OF NEW YORK)  
5 I, Kathy S. Klepfer, a Registered  
6 Merit Reporter and Notary Public within and  
7 for the State of New York, do hereby  
8 certify:  
9 That MARK J. SHAPIRO, the witness  
10 whose deposition is herein before set forth,  
11 was duly sworn by me and that such  
12 deposition is a true record of the testimony  
13 given by such witness.  
14 I further certify that I am not  
15 related to any of the parties to this action  
16 by blood or marriage and that I am in no way  
17 interested in the outcome of this matter.  
18 I further certify that neither the  
19 deponent nor a party requested a review of  
20 the transcript pursuant to Federal Rule of  
21 Civil Procedure 30(e) before the deposition  
22 was completed.  
23 In witness whereof, I have hereunto  
24 set my hand this 7th day of August, 2009.  
25

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 235

1 M. Shapiro  
2 INDEX  
3 WITNESS: EXAMINATION BY PAGE  
4 M. SHAPIRO Mr. Carden 5  
5 Mr. Wood 171  
6 Ms. Taggart 193  
7  
8 EXHIBITS: PAGE  
9 Exhibit 55A, a document bearing Bates 78  
10 Nos. BCI-EX-00077347 through 77349  
11 Exhibit 56A, Agreement 135  
12 Exhibit 57A, a document bearing Bates 158  
13 Nos. 10296233 through 10299664  
14  
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17  
18  
19  
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23  
24  
25

TSG Reporting - Worldwide 877-702-9580

Highly Confidential

Page 236

1 M. Shapiro  
2 NAME OF CASE. In re Lehman Brothers Holding  
3 DATE OF DEPOSITION August 7, 2009  
4 NAME OF WITNESS Mark J. Shapiro  
5 Reason Codes  
6 1. To clarify the record  
7 2. To conform to the facts.  
8 3. To correct transcription errors.  
9 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
10 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
11 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
12 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
13 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
14 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
15 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
16 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
17 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
18 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
19 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
20 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
21 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
22 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
23 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
From \_\_\_\_\_ to \_\_\_\_\_  
24  
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